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Reports.

LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE
1977
GENERAL ASSEMBLY OF NORTH CAROLINA

SEXUAL ASSAULTS

RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

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RALEIGH 27611

JANUARY 12, 1977

TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1977 General Assembly of North Carolina on the matter of Sexual Assault. The report is made pursuant to House Bill 296 of the 1975 General Assembly.

This report was prepared by the Legislative Research Commission Committee Studying the Problems of Sexual Assault, and it is transmitted by the Legislative Research Commission to the members of the 1977 General Assembly for their consideration.

Respectfully submitted,

John T. Henley

James C. Green

Co-Chairmen

Legislative Research Commission

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INTRODUCTION

INTRODUCTION

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes of North Carolina, is an all-purpose study group composed of legislators. The 1975 General Assembly directed the Legislative Research Commission to study a variety of subjects, including the problem of sexual assaults.

Senator William D. Mills, a member of the Legislative Research Commission, was appointed Chairman of this study and one on sex discrimination in North Carolina. To aid in the sexual assault study, additional legislators were appointed in accordance with G. S. 120-30.10(b). Senator Mary Odom and Representative David Bumgardner were selected as Co-chairmen. Other legislators appointed were Senator John Winters and Representative Carolyn Mathis. To broaden the study effort, two non-legislative members were appointed in accordance with G. S. 120-30.10(c): Mrs. Miriam Wallace, from the Charlotte Rape Crisis Center; and Professor Thomas Andrews, a law professor at the University of North Carolina at Chapel Hill School of Law.

Staff assistance was provided to the Committee through the Legislative Services Office. Mrs. Wanna Frazier served as Committee Clerk.

Chapter 851 of the 1975 Session Laws, First Session 1975, Section 11.7, contains the directive for the sexual assaults study:

In its study of the problem of sexual assaults the Legislative Research Commission shall undertake:

(1) An analysis of statistics of reported rapes and the ultimate disposition of these cases.

(2) An examination of the reasons rape cases are not reported or not prosecuted.

(3) A follow-up study of the long-term impact of the crime upon rape victims, and

(4) An examination of the social and psychological profile of the rapist to aid in the development of appropriate sanctions and programs for rehabilitation.

The Commission shall also review the North Carolina criminal code, examine pertinent court procedures and develop recommendations for revision of those statutory provisions and procedural policies it deems appropriate. The Commission shall further develop recommendations for implementation and funding for:

(1) Such programs as it finds necessary to train criminal justice, emergency room, crisis intervention center and rape crisis center personnel in appropriate techniques in the investigation and counseling of the rape victim, and

(2) Programs for education of the public in rape prevention.

This final report presents a summary of the Committee's work in response to the guidelines laid down by the 1975 General Assembly. It is separated into the following sections: COMMITTEE PROCEEDINGS*, FINDINGS, RECOMMENDATIONS, SUMMARY OF PROPOSED LEGISLATION, and PROPOSED LEGISLATION.

* One complete set of Committee Minutes (prepared in summary form) is on file in the Legislative Library.

COMMITTEE PROCEEDINGS

The Committee held eight regular meetings and a public hearing in its study of the problem of sexual assaults. The organizational meeting was held on October 28, 1975. Chairman Senator Mills presided; he indicated that Co-chairmen Senator Odom and Representative Bumgardner would direct the substantive study, and that the staff was instructed to work under their supervision. Committee members discussed appropriate sources for information on the problem of sexual assaults and requested the staff to contact the following: sexual assault victims; medical personnel; rape crisis volunteers; law enforcement officers and police training programs; district attorneys; defense attorneys; and specialists in the mentality of sex offenders.

The second meeting was held on January 29, 1976. During the morning, Committee members met privately with several persons who had been victims of sexual assault. Each person made a statement to the Committee and then responded to questions and participated in a forum-style discussion. The principal topics discussed include: 1) whether the assailant was a stranger, acquaintance, close friend, or relative; 2) whether the assault had been reported and/or prosecuted, and reasons for action taken; 3) involvement with medical and/or police personnel; 4) involvement with judicial system including district attorneys and defense attorneys; 5) involvement in rape crisis or other emergency intervention centers; and, 6) emotional response to the assault,

both short-term and long-term.

In the afternoon, testimony was received from several professionals in the medical field. Dr. Elaine Hilberman, U.N.C. Department of Psychiatry and Medical Director of the North Carolina Memorial Hospital Rape Crisis Program, discussed generally the crisis of rape and the needs of rape victims and outlined the North Carolina Memorial Hospital program. This program involves a "team" approach utilizing an emergency nurse, a gynecologist, a mental health counselor, and the hospital security staff. At the heart of the program is concern for the victim's physical safety as well as her short-term and long-term emotional security. From a psychological perspective, the victim has lost control over her destiny; treatment of the victim during the hours immediately following a sexual assault should include a concentrated effort to restore to the victim responsibility for decision making as to her future.

Judith Kraines, Director of the Chapel Hill-Carrboro Rape Crisis Center, discussed how a community program can be coordinated with a hospital program (in this case, North Carolina Memorial Hospital). A rape crisis center's functions usually include: transportation of the victim to and from the hospital, police department, and home; pick up clothes and food for victim; baby-sit for children; encourage the follow-up check-up two weeks after initial treatment; and general companionship. A rape crisis volunteer may also work as a liaison with the police or district attorney, or help the victim to obtain needed professional assistance.

Teme Reice, Director of Education and Training for the North

Carolina Memorial Hospital Crisis Program, discussed training of counselors to aid sexual assault victims. The training is designed to make professional personnel more sensitive to the range of emotional problems and behavioral patterns evidenced by victims of sexual assaults, and to make such personnel more aware of their own preconceived attitudes towards such victims. Also, the training makes each "team" member more aware of his or her own role and the roles of other members.

Dr. Mary Susan Fulghum, on the staff of Obstretics and Gynecology at the U.N.C. School of Medicine, commented on the physician's role in the management of the rape victim. Although "rape" is currently a legal (not a medical) term, a physical evaluation must be made concerning whether a victim has been raped, and the physician is an integral part of the evaluation. Experience suggests that general practitioners are not necessarily trained to perform orderly examinations or interview rape victims, and collect and store evidence. Often the result is that the doctor jeopardizes himself and the victim. As part of the comprehensive plan for medical management of the rape victim, there has been an effort to develop guidelines for the doctor's handling of the case which would minimize jeopardy to the doctor and the victim and would shorten the amount of time necessary for the actual examination and collection of evidence.

Mr. Bud Brexler, Director of Safety and Security at North Carolina Memorial Hospital, discussed the proper transfer and

storage of evidence collected during the medical examination. By maintaining evidence properly -- establishing the "chain" of evidence -- both the victim and the alleged offender are protected.

Dr. Page Hudson, Chief Medical Examiner, discussed improved medical treatment of sexual assaults from the medical examiner's perspective. The Medical Examiner's Office has in recent years been responsible for assembling a State-wide medical examiner system to investigate certain types of death. Physicians often avoid getting involved in rape cases because of fear of testifying in court and concern about trial delays. A similar problem exists concerning cases of alleged child abuse and neglect. But a recent state law requires physicians and other "professionals" to report cases of suspected child abuse to the county director of social services. Because of this law and certain federal legislation, the Medical Examiner's Office is preparing a program to identify physicians throughout the State who are competent and willing to examine these children. This program would include back-up support consultation in especially difficult or unusual cases and would provide some coordination among the various disciplinary and geographic areas which would be united in the program. This program will likely be extended to cases of abuse and neglect of elderly persons as well. Because of the similarities between cases of abuse and cases of sexual assault, this program might be appropriately extended to include treatment for victims of sexual assault. In the long run, the result would be to develop a network of physicians throughout North Carolina who would be experienced in

treating sexual assault victims and preserving evidence collected.

On March 15, 1976, the Committee met for the third time. Several participants appeared representing various professions in the criminal justice field. Professor Barry Nakell, U.N.C. School of Law, commented upon the scope of cross-examination in criminal trials generally and upon a possible legislative proposal to limit cross-examination in sex offense crimes. In any criminal trial, the interest of the accused and society in general, in due process, requires that the accused be allowed the same scope of cross-examination, regardless of whether the crime is a sexual assault. While there is a very legitimate interest in protecting the victim's privacy from invasion, this should be accomplished by assuring that participants in the criminal justice process have greater sensitivity towards the victim. Education of the public generally is also necessary because there is too much emphasis on the rape victim and she is not even a party to the trial. A more direct judicial process is available to the victim - a civil suit against the assailant to recover money damages.

Professor Nakell outlined certain characteristics of the crime of rape which should be kept in mind in evaluating evidentiary standards for prosecutions: 1) it can be very heinous; 2) it involves conduct customarily recognized as legal in proper circumstances, unlike most serious crimes; 3) it is often fabricated; and 4) it involves a greater danger of bringing into public view matters that witnesses would prefer to keep private. Also, the principle of relevancy applies to all criminal prosecutions; this principle helps guide the court in determining the kind of evidence

that can be used. The test of relevancy should not be more stringent in a rape case than in any other criminal prosecution. The law in North Carolina provides that a mistake of fact with regard to consent is a defense to rape: if the defendant believed that the woman consented and if his belief was reasonable, he has a defense even though she did not believe her consent was given. Under present law, evidence of other criminal activity by the defendant can be introduced to show he acted with a particular motive or knowledge, or repeated a particular pattern. Evidence can also be presented showing the prior relation of the victim to the defendant, and even showing the prior relation of victim with others if defendant had knowledge of this. This may be relevant as to the question of what is a reasonable perception of the victim's behavior by the defendant. It may also be relevant if the prosecuting witness has previously had sexual experiences suggesting a particular psychological tendency to falsely "cry rape".

It is appropriate for the legislature to specify that the judge should hear evidence privately to make a prior determination of its relevancy; this would assure greater scrutiny by the court into the relevancy of such evidence. There is ample constitutionally acceptable precedent for this "in camera" determination as part of a public criminal trial. A basic problem in rape trials is the attitude of law enforcement, medical profession, and officers of the court, as well as society in general, towards the rape victim. It is difficult to legislate a proper attitude.

Mr. Robert Farb, Durham Assistant District Attorney, spoke about the victim's experience in a rape trial. She is the one on trial;

she is most often the chief witness for the State which must prove the defendant's guilt beyond a reasonable doubt. This is unavoidable because the nature of our criminal justice system does not recognize the rights of victims of crime. The most important legislative proposal for this study committee to consider is limiting the cross-examination of the prosecuting witness. Under present law, if the defendant plans to argue consent (which is likely if the victim did not receive any other demonstrable physical injury), there is no limit on the questions which can be asked of the prosecuting witness regarding all her prior sexual experiences. Naturally, a person is reluctant to testify on behalf of the State if she is likely to be put through this ordeal. And, a district attorney must alert her to the possibility of such ordeal. In terms of punishment and terms of fairness, sexual assault should be made sex neutral.

Mr. William (Bud) Crumpler, Raleigh Attorney and former Assistant District Attorney, discussed his involvement with rape prosecutions as an assistant district attorney. Current attitudes toward these cases are derived from Victorian times; rape and other sexual assault need to be thought of as crimes against the person, to remove the connotation of embarrassment. His experience has indicated that 10% to 20% of reported rapes are frivolous, and a similar percentage are clear-cut rapes. In the middle are a large percentage of cases which appear to be sexual assaults but there is evidence that the woman has helped precipitate the incident (i. e., by getting "picked up" in a bar or hitchhiking). It is difficult to prosecute and obtain a conviction in these cases.

The Committee should consider degrees of sexual assault in order to bridge the gap between assault on a female and assault with intent to commit rape. If the death penalty were abolished for first degree rape, the defense attorney would be less able to dwell on the unusual severity of punishment, and the net result would likely be more convictions.

Mr. A. B. Coleman, an attorney and former State Senator, suggested that the crime of rape should be abolished and sexual assault placed in terms of various degrees. The Committee was cautioned not to expect to be able to cure the complex problem of sexual assault with a legislative proposal. Contemporary society is saturated with concern for and appeal to the sexual appetite. The Committee was also warned not to act quickly in limiting the cross-examination of the past acts of sexual conduct of an alleged rape victim, because of the racial factor still evident in many cases tried before North Carolina juries. In such cases, the balance usually tends to shift away from the defendant; if the defendant's attorney can not cross-examine the alleged victim effectively, the defendant may not get a fair trial.

Mr. Adam Stein, an attorney from Chapel Hill, stated that the death penalty should be abolished and penalties for second degree rape be reduced substantially. With present punishment, defendant is less likely to plead guilty. Cases are tried which, if penalties were more realistic, would not be tried. The Committee should be careful about adopting outright the recent theories about the cause of rape. Despite these theories, it appears that some degree

of lust is involved in a sexual assault: for rape to be accomplished, the rapist must become sexually aroused. Also, in spite of other testimony presented, a defense attorney weighs the circumstances carefully in deciding whether and to what extent to cross-examine the prosecuting witness about her past sexual conduct, because the jury is very likely to sympathize with the witness and believe that the attorney is trying to badger and embarrass her.

Dr. Jim Luginbuhl, North Carolina State University Professor of Psychology, discussed briefly the results of research dealing with rape. One experiment examined how the respectability of a rape victim, or at least how she is perceived by other people, influences their judgment as jury members. It appears they tend to penalize the rapist much less when the victim is unrespectable. This research indicates that information as to respectability and character should not be introduced as evidence in a rape trial unless it bears directly on the case. Another experiment described a rape incident and varied the penalty options available to the subject juror. When the subject had several options, he tended to find the rapist guilty; when the option was not guilty versus guilty with automatic life sentence, he more often found the rapist guilty; but when the option was not guilty versus guilty with automatic death sentence, he usually found the rapist not guilty even though he actually believed the rapist had committed the crime. These subjects simply refused to convict, knowing the accused would receive the death penalty. Dr. Luginbuhl stated from his own observation the severity of penalties currently assigned for rape

has unfortunate consequences; victims are often unwilling to prosecute and juries are unwilling to convict because the penalty is simply too severe. Appendix C contains a more detailed report on these research projects.

Mrs. Jean Boyles, Police Attorney with the Chapel Hill Police Department, discussed efforts to coordinate activities between the police and North Carolina Memorial Hospital. One problem which has been overcome is the unwillingness of hospital personnel to allow a police investigator to be present during the victim's interview and examination. It should be understood that many victims come directly to the police rather than seeking medical treatment first. Lines of communication between law enforcement and the medical profession must be established and maintained.

Mr. Ben Callaghan, a Sex Crime Investigator with the Chapel Hill Police Department, indicated his department does not advocate resistance but does suggest that the victim try to talk with the potential rapist. Research has indicated that this course of action may be successful because it allows the rapist an opportunity to view his intended victim as a person and not just a sex object.

Mr. Kurt Stakeman, Police Attorney for the Raleigh City Police; and Captain Jim Stell, Sergeant Gary Black, Detective Bob Freeze, and Officer T. W. Gardner, all of the Raleigh Police Department, discussed the development in their department of a specific procedure to investigate rape and potential rape cases and treat

victims. They suggest that from their observations police officers generally have a great deal of compassion for a rape victim. Each police officer outlined his role in and discussed the sequence of events transpiring after a rape case or potential rape case is reported to the police.

Ms. Sue Lyons, Training Coordinator for the Criminal Justice Academy in Salemburg, discussed the development of a program to instruct law enforcement personnel in the handling of rape victims, which had been requested by members of the Legislature and the State Attorney General's Office. Two courses have resulted: 1) a one-day course, primarily for doctors and nurses and other medical personnel, called "Medical Management of the Rape Victim" - a major feature is exposure to mock courtroom procedures; and 2) a two-week investigative course designed mainly for law enforcement from the patrol level to detective level. The course's objectives are to protect and preserve the victim psychologically and emotionally, and to concentrate on detection, apprehension, and the prosecution of the defendant.

The Committee held its fourth meeting on April 22, 1976, to hear testimony about the social and psychological profile of the rapist.

Dr. Paul Fiddleman, Associate Professor, UNC Department of Psychology, discussed the crime of rape and the kinds of people who commit rape. Rape has a very fearful connotation for women but not for men, because men cannot share this feeling. It is a

power move primarily exerted by men against women victims. Statistics reveal that a great number of forcible rapes are committed by acquaintances, friends, or relatives. Rape does not begin as a sexual act by motivation but ends up with a sexual assault. It is an extremely profitable crime in the sense that it is very hard to prove in court. The crime is often planned beforehand, much as a robbery. The offense of rape includes many situations far less likely to do damage to the individual or to the community than forcible, nonconsenting sexual assault; this results in a large number of men being improperly considered dangerous and convicted of rape.

Rapists tend to be very aggressive as rape is an aggressive act, but they are not oversexed or sex maniacs. Usually they have adequate sexual habits or outlets. They are rather unpleasant people who do not like women. There are different types of rapists: compulsive, amoral delinquent, drunken, explosive, and the double standard; and about one-third that do not quite fit any of these categories, such as mentally retarded people. Rapists are aware of public skepticism surrounding the issue of rape, and they use this in offering their own version of the incident. They tend to present seemingly plausible accounts of their actions to substantiate their innocence. Most convicted rapists feel that a lack of violent physical resistance indicates consent on the victim's part and frequently this belief is supported by the police, courts, juries and the community. Police say to resist rape is to risk serious injury or death, but if one does not resist, she (he) probably faces humiliation and disbelief on the part of authority.

Rapists in prison are usually brighter than the average inmate

and make an excellent prison adjustment. About 60% or 70% of the rapists usually are drunk when commiting the act, and victims are often drunk or on drugs. Men convicted of rape may be: lacking in ethical and moral principles or sense of social resposibility; immature men who believe that sexual conquest is a sign of adulthood and virility; emotionally disturbed men who are seeking an outlet for frustrations of sexual activity; or men following a racial or cultural behavior with which they are familiar.

Historically, psychiatric treatment has not proven successful in changing the behavior of these people. When rapists are observed without looking at their crime (evaluated psychologically and psychiatrically), they do not have any apparent or clear-cut psychiatric problems. Most offenders cannot be rehabilitated at this time; they can be treated psychologically, but one cannot be sure whether they are going to rape again.

Once conviction has been obtained, the offender should go to jail for a definite period. After that time, the judge (or some other authority) ought to take a look at the individual and if he fits into a given category, then add on still more time or order treatment. Keeping the death penalty for first degree rape encourages rapists to get rid of their victim, because a corpse cannot testify.

Dr. Richard Felix, Staff Psychiatrist in the Department of Corrections, commented that it would be a mistake to look at rape as an illness. People who have commited rape may have a wide range of psychiatric disorders, but rape is not a sexual disorder.

Rapists have some disturbance in their interpersonal function and a special disturbance in their relationship with the opposite sex. The act of rape is extremely hostile; however, convicted rapists have a reputation of not being disruptive, difficult people. The sexuality aspect is not the primary motivation for committing rape. There is no concerted program to treat sex offenders in the Department of Corrections; if the sex offender gets any treatment, he gets it at his own request or is referred because of some other disruptive tendency. The Committee should consider expanding the size of the Department of Correction Psychiatric staff to develop studies for prevention of rape rather than treatment of rapists; more doctors, research assistants, nurses, etc., are needed.

Dr. Bob Rollins, Director of Forensic Services, Division of Mental Health Services, Department of Human Resources, stated that a number of states have tried to cope with the problem of sexual offenders but that independent evaluations have concluded that there has been no effective treatment program for sex offenders. Lots of deterrent kinds of people commit sex offenses: retarded, psychotic, neurotic or psychopathic; there is no known effective program generally for treatment of these various kinds of sexual offenders. Psychiatric examinations should be provided for offenders who are thought to have psychiatric problems; authority should be clearer to require people who are placed on probation or whose sentences are dropped on condition that they get the treatment to actually get the treatment; and treatment currently available in Corrections and Mental Health should be upgraded. The

Committee should consider eliminating the death penalty for rape because it tends to remove some slight measure of protection for the victim.

The correctional system has 13,000 people in it with one 72-bed mental health facility at Central Prison and another 72-bed mental health facility that is now vacant because it has no staff. It is difficult to get psychiatrists to work in correctional facilities, and resources are limited. Rehabilitation or treatment in a correctional setting is extremely difficult, but not hopeless. The State should provide a nice safe place for the inmate so that if he wants to participate in any kind of program of rehabilitation he can, but imposed rehabilitation is generally unsuccessful. /A summary of Dr. Rollins' presentation, including a list of recommendations for consideration by the Committee, is set out as Appendix D./

Professor Thomas Andrews, a committee member, reviewed the current North Carolina General Statutes relating to rape and other sexual assaults, explaining the elements of each crime as well as the penalty range for each crime. The committee discussed and agreed upon the provisions to be included in the first draft of a legislative proposal, to be prepared for discussion at their next meeting. The Committee was made aware that the Knox Commission is working on a legislative proposal regarding the subject of fixed sentencing punishment, and that the Criminal Code Commission will propose legislation completely rewriting and modernizing G. S. Chapter 14, "Criminal Law". Apparently the Criminal Code Commission's work will be completed in time for the 1979 General Assembly Session.

The Committee met for the fifth time on June 24, 1976. Dr. Bill Barber, with the N. C. Criminal Justice Academy at Salemburg, talked generally about his professional involvement with sex offenses and sex offenders, based on experience for the past 21 years as a criminal psychologist. His comments represented his own perspective, not that of the Academy. One of the most difficult crimes for all law enforcement to investigate is child abuse; in over 70% of these cases, the natural mother commits the offense, and in over 90% of the cases where the child is killed, the natural mother has committed the crime. Evidence has proven that the natural mother tended to be an abused child herself and in almost all cases was abused sexually. These are alarming and shocking statistics.

Concerning types of rapes, the forcible rape of the adult female results in the humiliation of the victim either physically or psychologically, and present are the dynamics and psychodynamics of the sadorapist. Some of the assailant's tendencies and characteristics are: attempts to reduce and humiliate the female victim to nothing; is a cruel and sadistic individual; appears calm outside but is a living volcano inside; will rape and inflict pain before, during and after the offense; the object of sex and inflicting pain become confused during the act; was not loved, or did not receive any attention or feeling of comfort during childhood and was rejected mainly by his mother. The sadorapist along with the criminal sexual psychopath are two extremely dangerous people, and their behavior cannot be reversed.

The criminal sexual psychopath: exhibits lack of guilt and lack of feeling for anyone; is fairly bright but of low moral

character; believes the world revolves around him, and rules mean nothing to him; is an enigma to the medical and legal profession. As far as medical science, psychology and psychiatry, there is no known cure for the psychopath (also called "sociopath"). The psychopath does not exhibit the bizarre characteristics of a schizophrenic or someone suffering the psychotic state where there is a complete break with reality; he functions very well in reality; he is a con man; he will come out of jail and do the same thing over again; he is frustrated by life; he is a loner or organizer of the gang and wants to be top dog in whatever he does; he wants to be the focus of attention; he has been rejected from childhood and has never received any guidance on how to handle life. Capital punishment is not recommended for the psychopath, but this offender should be turned over to qualified psychiatrists to study him experimentally to learn from his behavior information to help in the area of prevention. Dr. Barber also advocates the use of the polygraph in the hands of a skilled and trained examiner.

Another type of rapist is the pedophiliac or child rapist. If he exhibits deviant behavior of a long enduring nature, it establishes an irreversible pattern, and there is no known cure. This man is impotent and does not have normal heterosexual tendencies so he seeks out young children. If he is of middle age, he will frequently murder to cover the sexual assault. He is afraid of an adult female because of his sexual impotency; therefore, he picks up a young child. When it is determined that this offender's conduct is irreversible, he should receive mandatory sentencing.

A separate category is the occasional or situational rapist who rapes as a result of the situation he or she is in. There are women who commit rape. Another type of rapist is the necrophiliac; this is a relatively rare assault, but Dr. Barber has observed more than 50 cases.

The "false report" is often a problem in connection with adult female rape; there should be protection for the individual falsely accused. Many careers have been ruined even though the accused was cleared of the offense charged against him.

Dr. Barber stated that training for police, district attorneys, court counselors, and corrections officials should be required and tied in with the university system, because more can be accomplished by education and training than by changing the State's statutes. A court management program should be developed to move the docket in court so that the trials would be speedy and punishment would be swift and sure. History has shown that punishment need not be harsh but swift and sure: the offender sees no connection between the crime and punishment if he is tried a year later.

The presentence investigation area is totally neglected, and the average presentence investigator does not have the knowledge, background or training to analyze sex offenders properly and give the judge an effective report from which to determine a fair sentence. An effort should be made to turn the investigation over to forensic psychiatrists or to the state institution attached to the penal system. There should be full pre-trial criminal discovery and disclosure - with all evidence turned over in a preliminary hearing with a judge presiding and with defense counsel, the district attorney, the defendant and the victim all present, in order

to scrutinize all evidence and information at the pre-trial conference. This would reduce the time of many trials and would increase the pleas of guilty.

Dr. Paul Fiddleman, UNC Department of Psychology, commented that rape is a profitable crime: only 5% of those arrested serve time in prison. Additionally, only about 5% of those who commit rape are even apprehended.

The rape-murder presents a different class of rapists who get carried away in a situation, with the result that there is no way out but assaulting and killing the victim. A rape-murder is usually not planned but is a reaction to apprehension. There is no way of treating this kind of rapist in prison because he is predatory.

There are several kinds of sexual activity that result in rape. (1) The"date rape", a hard case to handle, is primarily motivated by sexual interest and tends not to result in additional physical injury to the victim. (2) Sexual activity with a victim who is drunk or drugged is rape legally, because probably the victim would have resisted had her senses not been diminished and, therefore, she didn't really give consent. (3) Sexual activity with a willing person who is mentally ill or mentally retarded is also rape. The person who knowingly engages in these forms of sexual activity is not the highly dangerous rapist, and probably will not repeat such activity. Less data is available on these types of rapes, because they are not so frequently reported. (4) The "in-between" kind of rape, which involves forcible intercourse, with a victim met at a party, social gathering or bar is sexually

motivated but not clear-cut rape. The assailant is most often a split-image rapist who sees two kinds of women - good girls like mother, sister, or aunt deserving respect and kindness, and bad girls who don't deserve respect and kindness because they get "picked up" at a bar. (5) Gang rapes are those in which 6 or 7 guys take out a girl of easy virtue and when she doesn't submit, they make her and very often beat her. The rationale is that she has done it before and it can't hurt her reputation so they changed her mind. (6) Forcible rape by a stranger, which seems to be more predatory, is an act of aggression and an act of demeaning and humiliating a person. (7) Afterthought rape involves an incident with the initial motivation being robbery or burglary; rape follows because the victim is alone and vulnerable. This type of rapist is peculiar because he tends to take something with him as a kind of trophy.

Dr. Fiddleman suggested possible ways of cutting down on the number of rapes and assaults: a police car cruising with its blue light in hospital and library parking lots or anyplace where there is shift work (increase surveillence in areas of high risk); self-protection programs for women whereby they walk in groups and have keys in hand ready before getting in the car; programs to teach basic survival techniques; and patrol playgrounds for pedophiliacs because the stranger-child molester is one of the most dangerous human beings in society.

Dr. Fiddleman said the criminal penalty for sexual assaults should be severe enough to put the worst offenders away from society for a long time but should not be too severe, because of the

difficulty of obtaining a conviction. If a sex offender is acquitted, he will tend to repeat the criminal activity because he has observed that it is unlikely he will be punished. Rape appears to be a very "profitable" crime from the standpoint of the likelihood of its being reported or the criminal arrested, prosecuted and/or convicted.

The Committee reviewed and discussed the "first" draft of a legislative proposal to reform the law of sexual assaults, as prepared by Professor Andrews and submitted by mail to each member. After lengthy discussion, Professor Andrews was requested to make several changes and prepare a "second" draft for consideration at the next meeting.

On September 2, 1976, the Committee held its sixth meeting. The purpose of the meeting was to review the "second" draft of proposal legislation to reform the laws relating to sexual assaults. Following deliberation about each provision contained in the second draft, the Committee agreed upon further revisions and requested that Professor Andrews prepare these changes.

The Committee met on September 20, 1976, its seventh meeting, to review the changes made in the second draft of proposed legislation. There was considerable deliberation on the draft as changed.

Mr. Bill Lassiter, representing the North Carolina Press Association, spoke to the Committee about his group's opposition to any legislation with respect to prohibiting publication of a so-called rape victim. He indicated that the Association would probably oppose any effort to seal a warrant for any given length of time, because of its feeling that this injects secrecy into the

judicial system and does not promote justice. He noted, however, that the Association is sympathetic towards those individuals who are really raped.

The Committee held its eighth meeting on September 28, 1976, in Charlotte to deliberate on the "second revised" draft of a possible legislative proposal regarding the laws relating to sexual assaults. Several hours were spent examining the language and substance of each provision of the draft. The Committee agreed upon a "final tentative version" of the draft to be submitted to interested associations, organizations and other groups as well as to any individual citizens who requested a copy. The Committee decided that a cover letter explaining the study's work-to-date and presenting a brief summary of the draft bill should accompany the draft. Finally, it was determined that the next meeting would be conducted as an open hearing to provide a suitable opportunity for anyone who wished to comment upon the Committee's draft.

On December 8, 1976, the Committee held a hearing to invite comments and criticisms of its tentative legislative proposal concerning changes in the law of sexual assaults. Senator Odom commented that the Committee will make a final report, including legislation, to the Legislative Research Commission in the next few weeks.

Franklin Freeman, Administrative Assistant to the Chief Justice of the State Supreme Court, Susie Sharpe, and Assistant Director of the Administrative Office of the Courts, stated that the Court believes the idea of limiting cross examination of prosecuting witnesses concerning past sexual conduct is sound and recommends that some legislation along this line be enacted. The definitions

of "emotional distress" and "bodily injury" raise problems for the magistrates in writing up a warrant, the district attorneys in trying to decide what to prosecute the defendant for and the judges in charging the jury depending on the facts presented in court. The Court feels this problem would prolong assault cases and result in addition to the already congested court dockets. The court also questions whether the committee's intention was to legalize homosexual acts between consenting adults in the definition of "sexual act". Another problem the Court notes in the proposed draft is the repeated use of the term "substantial steps"; since there is no present definition of this term, it would take several years to develop case law definitions. The subsection requiring that the victim not be referred to as prosecutrix is deficient because of the use of "shall" and recommended that "may" be used instead. The punishment provision for fixed sentences without possibility of parole for sex offenders may or may not be good, but fixed sentencing should be considered with regard to all serious crimes. Basically, the Court thinks this is a bad bill and should not be enacted.

Randolph Riley, Assistant District Attorney in Wake County, commented on behalf of the North Carolina District Attorney's Association. The imprisonment provisions of the draft were questioned. Also, the phrase "to take substantial steps" occurs eight times in the classification of offenses, is unknown to present law and yet is not defined. What area of a person's body is not "sexually sensitive"? Under the proposal, the problem the judge would have in charging the jury in a contested case would be greater than any citizen's fear of punishment. Concern was

expressed over the drastic downgrading of punishment accorded serious assaults. The Association endorses the principle of restricting evidence of other sexual activity of a witness and offered a legislative proposal in 1975 which would provide for an in-camera hearing to determine its relevance. The enactment of the proposed bill is not in the public interest and would be a detriment to efficient and fair administration of justice in North Carolina.

Keith Teague, a District Attorney from Elizabeth City, expressed concern over the inclusion of several terms: "emotional distress", "risk", "unjustifiable risk", "sexual arousal", "criminal negligence" and "sexual gratification" which are difficult to argue; because there are so many categories involved, it would be very difficult from the magistrate's and jury's standpoint, as well as the judge's. Something needs to be done to increase the percentage rate of convictions on rape, but a complete revision of the present assault law is not justified. The present assault law is sufficient but, in terms of the rape law, the protection of the prosecuting witness from extensive cross examination about the victim's past is the key thing: what is the relevance of whether she had sex with 15 other people but not this defendant? The relevance is not determined by the finding of facts but by the objection and the over ruling by the court, and there is no specific finding of facts there.

Mr. Paul Lawler, a spokesman for the North Carolina Student Legislature, stated that his group applauded the draft bill. It shows compassion for the victim and changes the law in line with Twentieth Century reality through the realization that much of the

anguish of a sexual assault comes in the treatment of the victim by the authorities after the assault. The following solutions are offered to alleviate the problem of unnecessary suffering: (1) each city or county should designate a central receiving hospital or clinic for examinations and treatment of the sexual assault victim; (2) this central clinic should have a licensed physician on call at all times; (3) the victim should be entitled to request her own physician perform the examination. The following provisions are suggested for the questioning of the victim: the victim should be questioned by a person of the same sex trained for this job, and the victim should be allowed to have a companion present, so that information can be obtained without unnecessarily upsetting her. The adoption of these proposals is urged in order to assure needed protection and contribute to a better system of justice.

Ms. Joyce Davis, an attorney speaking on behalf of the Legislative Committee of the North Carolina Rape Crisis Association, recommended a specific change concerning the definition of a victim who is a child, by eliminating the phrase "unless that belief is reasonable under all the circumstances" as it would give a loophole. The definition of "sexual contact" and "sexual act" is basically good but the terminology "sexually sensitive area" is unnecessary and should be removed. The terms "intentional" and "knowingly" should be deleted throughout the draft; "emotional distress" under aggravated misdemeanor assault should be removed and another type of aggravation added in terms of retardation (someone that would not have the mental or physical capacity to comprehend). Finally, the death penalty should be abolished in

connection with sexual assaults.

Reece Trimmer, Legal Advisor for the City of Durham Police Department, representing the N. C. Association of Law Enforcement Legal Advisors, recommended breaking down the draft into as many separate component bills as logically possible and urged omitting those provisions relating to non-sexual assault, proposals regarding fixed-term sentencing, and any other proposals that duplicate or contradict efforts of existing commissions such as the Knox Commission on Sentencing or the Criminal Code Commission except as related strictly to sexual assaults. The concept and drafting of the rules relating to consent are favored as an improvement in the existing law as it extends legal protection to victims of diminished mental capacity or impaired capacity. The age of consent for a child should be defined as a person under the age of 15. The "sexual assaults between spouses" rule is favored because if a husband can be convicted of assaulting a female, he ought to be able to be convicted of raping his wife. The concepts of the provisions in the draft in the sexual assault prosecution section which are largely evidentiary, and procedural changes relating to cross examinations and the method of treating certain aspects of a sexual assault prosecution are generally favored. The section on the cost of medical expenses is favored. The bill as drafted (as applied to sexual assault) would create a substantial burden to the magistrates - in drawing warrants - and to district court judges. The effort which went into defining it in neuter terms appears to have resulted in legislative language that is so complex as to become unworkable in real life; the idea of treating sexual assault as a special category of assault is attractive, in principle.

Ms. Debra Kay, with the Carrboro-Chapel Hill Rape Crisis Center, commented that they agreed with the principles stated in the draft and supported the bill very strongly. The term "emotional distress" should be removed. There is a great need for rape experts in trials to educate juries. The death penalty should be eliminated for rape cases. The limitation on evidence section is favored since our major concern is the effect of the court process on the victim. "Sexual contact" and "sexual act" should be defined but the phrase "sexually sensitive areas" should be removed. The addition of the "sexual assaults between spouses" section and the section on "unprofessional medical practices" is welcomed, and the Committee should retain them. Generally, it is hoped the Committee will continue with its effort to fit sexual assault law in with other criminal assaults. Finally, a drastic change in the current law on this subject is warranted.

Ms. Barbara Donadio, a nurse in the Outpatient OB-GYN Department at Memorial Hospital in Chapel Hill, gave her views on different aspects of the bill: the definitions of "sexual contact" and "sexual act" are favored; the provision for providing opportunities of a wife charging her husband with sexual assault is favored; the provision to clarify the issue of consent is favored; the provision on the rights of a medical or mental patient is favored.

After much discussion by the Committee members, Professor Andrews made the following motion: "Whereas we have been persuaded by the overwhelming weight of the testimony that has been presented today that our efforts to revise the general assault laws beyond

the area of sexual assault are idealistic and perhaps ill-advised, that we delete those portions of the draft not specifically related to sexual assault." This motion was seconded by Mrs. Miriam Wallace, and the motion carried.

Ms. Dania Southerland, Legislative Coordinator for the North Carolina Rape Crisis Association, said that the State Association supports the draft in its entirety and offered to render any support necessary to help get the bill passed. Communication between the centers and interested groups in the State is difficult. Some of the problems that rape crisis centers face could be solved by the creation of a State Facilitator's Office to coordinate the efforts of centers and relay helpful information from one center to another, and this office could be created and funded as part of the Department of Natural and Economic Resources, Division of Community Assistance. The Committee was urged to approve the creation and funding of this office.

On December 9, 1976, the Committee held a meeting to review the information received at the December 8th public hearing, to discuss further the draft legislation, and to instruct the staff on preparing a final report for submission to the Legislative Research Commission. The members reexamined the tentative proposal line-by-line, suggested substantial revisions and certain deletions, and instructed Professor Andrews and the staff to prepare a "third" draft incorporating these changes. The staff was also instructed to prepare a draft bill to establish a State Facilitator's Office, and to prepare a "rough" draft of a final report, all for consideration of the Committee's next meeting.

FINDINGS

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After having reviewed the information brought forth at its meetings,and in accordance with the specific topics mandated for study by the 1975 General Assembly, the Committee studying the problems of sexual assault makes the following findings:

1. Analysis of statistics of reported rape cases and the ultimate disposition of these cases:

Statistical data concerning reported rapes has only developed in very recent years, particularly with regard to North Carolina. The Committee examined primarily two sources of information on this subject. First, the North Carolina Commission on the Education and Employment of Women published a report in 1974 entitled The Status of Women in North Carolina, which contained certain pertinent findings and conclusions. The report stated that: a rape is reported about every 11 hours in the State; the number of reported rapes increased from 602 in the year 1969 to 847 in the year 1973 (about a 41% increase); of all reported rapes in 1973, about 65% were forcible rapes and 35% were attempted rapes; June and August has the greatest frequency of reported rapes in 1973; and, of reported rapes in 1973, about 65% resulted in arrests being made. The report also focused on six of the more urbanized areas of the State, indicating that between 1969 and 1973 the number of reported rapes increased (on a percentage basis) 68% in Charlotte (low) and 224% (high) in Fayetteville. Note that this does not necessarily indicate that rapes are escalating at a faster rate

in Fayetteville; the 224% increase may reflect the development of better reporting procedures, improvements in compilation of crime data, and/or improvements in techniques of law enforcement and medical personnel.

Based on its effort to collect information about reported rapes, the Commission concluded in its report that knowledge is lacking about the personal and social factors related to rape; that publicity and the legal process impose such a burden on the victim that, in all probability, many rapes go unreported; and that there is need for additional rape crisis centers, especially in more urban areas, to help in the victim's rehabilitative process. Appendix E, Exhibit 1 contains an excerpt from the Commission report.

A second source of information on reported rapes in North Carolina is the annual report prepared by the Police Information Network (North Carolina Department of Justice) entitled Crime In North Carolina: 1975 Uniform Crime Report. This report presents statistical data on reported "forcible rapes," including assaults with intent to commit forcible rape, which occurred in the State in 1975. 852 forcible rapes were reported, an increase of 10.2% over the 773 cases reported in the 1974 UCR. July, August, and September were the months in which rapes were reported most frequently. About 57% of the total reported cases were "cleared by arrest or other exceptional means.

Starting in July, 1975, the Police Information Network began to collect additional data on forcible rapes. The following information is based on 289 of the actual rapes reported from

July through December (317 actual rapes were reported and 158 attempted rapes). 68.5% of the cases involved a victim and assailant of the same race. 57.8% of the cases involved an assailant who was a stranger to the victim, 31.8% involved an assailant previously known to the victim (i.e., friend, casual acquaintance, boyfriend, neighbor or family friend), and 6.1% involved an assailant related to the victim. 32.2% of the cases occurred at the victim's home, 17.0% occurred in a car, 13.8% occurred in a vacant or parking lot, and 13.4% occurred in a wooded area or field. 76.5% of the cases involved only one assailant, 12.8% involved two assailants, and 5.9% involved three assailants. 61.6% of the cases did not involve the use of a weapon. 34.6% of the cases resulted in injury to the victim. (Of the 100 cases involving injury to the victim, 3% required medical attention.) APPENDIX E, Exhibit 2 contains the section of the 1975 Uniform Crime Report dealing with "Forcible Rape."

At the national level, the Federal Bureau of Investigation's Uniform Crime Report indicates that 16,680 cases of forcible rape were reported in the United States in 1960. By 1970, the number had increased over 120% to 37,270; and, by 1972, the estimated total had reached 46,430.

It appears that very few reported rapes have resulted in conviction of the accused assailant. A study* by a Georgia commission reported that out of the 275 rapes reported in

*Rape and the Treatment of Rape Victims in Georgia - A Study, by The Georgia Commission on the Status of Women

Atlanta in 1972, only 31 individuals were convicted. This study also stated that the national conviction rate is estimated at only 9%.

All of the facts and figures presented above relate to reported rapes, but they do not aid in determining the large numbers of actual rapes which are not reported. Any precise calculation of the total number of actual forcible rapes occurring annually in North Carolina appears impossible. Educated guesses range from three to ten unreported rapes for every one that is reported. It is almost universally agreed that reported rapes represent merely the "tip of the iceberg."

In summary, North Carolina is experiencing a steady increase in the number of reported rapes each year; it is unclear what portion of the increase is attributable to: improved law enforcement record-keeping, victims less fearful of unfavorable public reaction, or increases in the incidence of the crime. Also, statistical data related to various aspects of reported rapes is of such recent origin, both in this State and at the national level, that firm conclusions are not easily drawn. An additional reason to examine with caution statistics on reported rapes is the likelihood that poor women--the majority of reported rape victims in most studies--are more likely to report a rape to public authorities than middle-class or upper-class women, who can go directly to their family doctor or psychiatrist for treatment. Finally, statistics are based solely on reported rapes, which represent a small proportion of the total actual rapes.

2. Examination of the reasons rape cases are not reported or not prosecuted:

Throughout Committee meetings and deliberations, several reasons were advanced in an effort to explain why so many rape cases are not reported. First, many victims experience a natural reluctance to retell and "relive" the traumatic incident, believing that their peace of mind will be restored more quickly if "things return to normal." In connection with this, if a victim is able to receive treatment privately which assures her immediate physical safety and, possibly, her emotional well-being, she may be less inclined to report the rape and stir up unpleasant memories associated with it. This natural reluctance on the victim's part may occur without too much regard for the external consequences of reporting the rape.

A second reason for the failure to report rapes is the victim's fear of retaliation by her assailant. Many incidents involve an assailant who, knowing where the victim resides and perhaps wnether she has children, threatens additional harm if the victim reports the crime. If the attack takes places under such circumstances that the victim's identity or residence are not apparent to the assailant (stranger), the victim may not want to report the crime and risk disclosing her identity. Fear of retaliation appears to be especially prevalent in those cases in which a child is the victim and the assailant is a relative or another known male. (Testimony from sources in the medical profession indicate that the child-victim class

is most likely to experience physical trauma, which adds support to the conclusion that such victims will continue to fear for their safety.)

Sexual assaults also remain unreported because victims are disturbed about the possible punishment for an offender if the criminal process results in conviction. Testimony from sexual assault victims suggests that the death penalty is regarded as so extreme that it discourages reporting the crime. [Note: All of the victims were commenting on assaults that occurred while the automatic penalty for conviction of first-degree rape was death. The death penalty for first-degree rape was not held unconstitutional until July 14, 1976, in State v. Thompson, 290 N.C. 431.] While each victim stated that she desired retribution for the harm done, no victim favored the death penalty. One victim, physically attacked by a stranger while she was walking on the street, was able to talk to the assailant for several minutes after the incident. Among other things, the assailant readily admitted that this was only one of several attacks he had made; the victim perceived an extremely emotionally disturbed person who needed professional treatment. But she hesitated to report the assault because of the spectre of the death penalty. Ultimately, she was persuaded to make a report because of the probability that the offender would continue his attacks. Such reluctance on the part of a victim is perhaps even more likely to occur when the offender is known (either a boyfriend, relative, or casual acquaintance), when the assault stops short of

penetration, or when the completed assault does not result in other physical injury. Although legally such assault may fall short of first-degree rape and thus not carry the death penalty, the public generally is not aware of the dividing line between "rape" that mandates death and "lesser rape."

Another reason many rapes go unreported, not so obvious, is the fact that many victims do not realize that they have been sexually assaulted. What the law (and society) regards as unconsented criminal sexual conduct is not always readily apparent, particularly when the victim is a child or adolescent and the offender is a trusted relative or other adult. Testimony suggests it is not unusual for such sexual conduct to occur over a long time period before the victim begins to realize that it is wrong. In many instances, such conduct has actually ceased before the victim is aware that she has been victimized.

The underlying reason that so many rapes are not reported, however, appears to be based on the victim's anxiety about the external consequences of acknowledging the assault--the reaction by law enforcement, hospitals and the general community. Such anxiety seems to be well-founded. Deep-rooted public attitudes have fostered an image of the "classic" sexual assault victim as either a liar or a tramp. In many cases, this has resulted in the victim being "assaulted" twice: the physical sexual assault and the indignity of public suspicion and ridicule. Several victims suggested that in a very real sense the second "assault" was more painful and more difficult to overcome. In the final analysis, it is because so many victims

who reported the assault have subsequently expressed resentment and anger at the public's insensitivity to them that such a large percentage of sexual assaults still are not reported.

The reasons that rape cases, when reported, are or are not prosecuted depend basically on the results of the victim's encounter with the community agencies which treat her and investigate her report--hospitals, rape crisis or other emergency intervention centers, police, and the district attorney's office. If a breakdown occurs in the relationship between the victim and any of these agencies, for whatever reason, her case may not be prosecuted. A sexual assault victim may first contact the hospital, the police department, the local rape crisis center, an all-purpose emergency center, or a relative or friend. Regardless, there will be early interraction with some medical facility. At this point, ideally, professionals become involved and attempt to: calm the victim and restore her sense of self-control; treat her for physical injuries and test for venereal disease; evaluate her emotional well-being and determine if professional treatment is appropriate; and collect and store evidence of the sexual assault for possible prosecution. If the victim's case at this initial stage is improperly handled by failing to collect or preserve the evidence or by treating her insensitively, she is likely to abandon it.

Similarly, trained law enforcement officials will become involved in investigating the victim's report at an early stage. Their investigation, while it may not include such a

physical intrusion of the victim as is necessary by medical personnel, does require a careful probing of the victim's mind, and at a time when the victim is to some extent unstable and disoriented. Again, competence and sensitivity on the part of trained professionals are important if the case is to receive further consideration.

Assuming the case is still active, the next agency encountered by the victim is the district attorney's office. A member of the district attorney's staff, assigned to prosecute the case, should interview the victim and examine the other available evidence in order to evaluate the likelihood of successful prosecution. At this point, the attorney usually will discuss with the victim the strength of the case and explain what events are likely to occur throughout the actual trial. This procedure seems appropriate because the victim is entitled to know beforehand what to expect during the trial. Testimony on this point suggested that the earlier the victim has an understanding of the criminal justice process the better; this allows her to make a more informed decision at the outset about whether to pursue a criminal prosecution, file a civil lawsuit, file a "blind" report with the police, or do nothing. Rape crisis counselors are beginning to make a significant contribution in this matter by providing this kind of information to the victim at a very early stage. Certain hospitals (for example, Memorial Hospital in Chapel Hill) are also attempting to give victims the "whole story" at the initial treatment stage. As these other agencies become more involved,

the district attorney will become less responsible for considering the victim's emotional state in determining whether or not to go forward with the prosecution. The district attorney should not be insensitive to the victim, but he represents the State--a party to the criminal proceeding--and his first responsibility is to evaluate whether prosecution is in the best interests of the State and its citizens.

Perhaps the main reason many rape cases are not prosecuted is because of the fact that the victim, as prosecuting witness, is subject to being cross-examined by defense counsel about her prior sexual activity with the defendant, questions about prior sexual activity with anyone. One of the basic legal principles used in determining whether any item of evidence is admissible is the test of relevancy. Evidence that passes this test may still be ruled inadmissible for a variety of reasons (for example, if its potential for creating undue prejudice in the minds of jurors outweighs its probative value); but evidence that fails to meet the test of relevancy is not admissible. It is one of the judge's functions to rule on the relevancy of evidence offered to prove the facts at issue in each case. As a practical matter it is usually not possible for the judge to make a separate ruling on each item of evidence offered prior to the time of its actual introduction at trial by the attorney. In fact, the opposing attorney is usually expected to raise doubt about relevancy by objecting to the introduction of the evidence.

The relevancy test applies equally to evidence of the victim's

prior sexual history as to other evidence generally. A problem which arises in a sexual assault prosecution, because of the timing of the judge's ruling on the relevancy of evidence of the victim's prior sexual history, is that even if the defense counsel's questioning is ruled irrelevant and, therefore, inadmissible (with an instruction to the jury to disregard the question and any answer given by the witness), the victim's reputation has been harmed and her privacy has been invaded.

The Committee has heard a substantial amount of testimony on all sides of this issue. On one hand, it has been suggested that the defendant's constitutional right to due process should be carefully protected since his freedom is at stake: a defendant in a criminal sexual assault prosecution should not be more restricted in his right to cross-examine a prosecuting witness than is a defendant in any other criminal case. On the other hand, it has been pointed out that the present rules relating to prior sexual history work a special hardship on the victim of a sexual assault because of the sensitive nature of the evidence of a sexual assault because of the sensitive nature of the evidence and, thus, only evidence concerning the specific incident should be admissible; and, continuation of the present practice inhibits the proper administration of justice because it discourages victims from testifying on behalf of the State. Others have suggested that steps should be taken to protect the victim by requiring the trial judge to screen in advance on the issue of

relevancy, any evidence sought to be introduced about the victim's prior sexual history, and that some legislative guidelines might be appropriate to restrict the scope of inquiry into a victim's sexual history, but that there should not be a blanket prohibition against such inquiry. The Committee generally has followed this "compromise" approach in drafting recommended legislation. See PROPOSED LEGISLATION .

3. A follow-up study of the long-term impact of the crime upon rape victims:

As would be expected, victims do not react to sexual assault in a uniform manner, either in the short-run or over a long time period. And, it is difficult to study the long-term impact of the crime upon victims without some mention of their reaction in the immediate aftermath. The incident itself places the victim in a "stress" situation, and people simply react differently to such stress. Testimony from medical personnel and law enforcement officials indicated that victims exhibit a wide range of behavioral responses: angry, nervous, tense, hysterical, fearful, shock, and calm. Testimony from victims themselves suggested that they had similarly experienced a variety of emotional responses, including fear, nervousness, and incredulity.

Testimony from representatives of several community agencies in Chapel Hill revealed a cooperative effort to identify the problems encountered by rape victims in order to develop a program of treatment which would respond to a victim's needs. It was pointed out that the overriding objective in such a

program (for example, the North Carolina Memorial Hospital program on "Medical Management of the Rape Victim") is to help the victim regain a sense of control over her life as quickly as possible. Research seems to indicate that regardless of a victim's outward behavior during the hours immediately following a sexual assault, she is almost certainly experiencing an inner feeling that she has lost control of her life. In the short-term, she probably feels at a loss to make any decisions, particularly those related to the assault. It is just at this point that a victim is likely to contact either the police, hospital, or a rape crisis center. And, it is at this point that treatment designed to restore the victim's sense of self-sufficiency and self-worth should begin. A significant feature of the treatment offered at North Carolina Memorial Hospital is a dialogue between the victim and an emergency room nurse which takes place prior to any examination or investigation (unless the victim requires immediate medical attention). The nurse answers questions and explains every step of the treatment process to assure the victim that no action is taken without her knowledge and informed consent. Additionally, a mental health counselor is available to the victim throughout the crisis period, helping the victim deal with the emotional impact of the incident and preparing her for the variety of emotions which will be experienced in succeeding weeks and months.

This treatment program is one example of the efforts being generated in certain communities by rape crisis centers,

hospitals, law enforcement, or these agencies acting together, to help sexual assault victims during the short-term crisis period. It would appear that such efforts increase the likelihood that a long-term adverse psychological reaction by the victim can be minimized.

Once the immediate crisis has passed, the victim often enters a stage of indecision and worry. This is the time when she must decide whether or not to prosecute, raising problems such as possible publicity in the newspaper, exposure to the assailant, and involvement in the criminal trial. She is likely to be anxious about telling family and friends (a surprisingly large number of victims, often young women, do not ever tell their families of the assault) and worried about the possibility of venereal disease or pregnancy. Following this stage, the victim tends to return to "normal," performing her usual functions and responsibilities. From the perspective of those close to her, she may appear to be untroubled. Testimony from medical personnel and victims indicated that during this time of adjustment the victim is "blocking out" the entire incident from her mind as much as possible.

A victim usually encounters yet another period--when memories of the assault return and dominate her thoughts. Like the crisis period, this one is not characterized by a discernible pattern of emotional response. But, the victim is likely to experience a variety of emotions. Medical personnel noted that this period is not unusual; in fact, it is most often a necessary step for the victim to "come to grips"

with the fact of the assault, recognize the various reactions it has elicited from her (for example: self-guilt, anger, anxiety), and realize that she has survived the crisis and reaffirmed her self-worth.

Assuming a victim decides to prosecute, the criminal justice process tends to inhibit her recovery from the trauma of the assault. There is often the fear of convicting an innocent man in cases in which the assailant was not positively recognized. Also, it is possible that questions about the victim's prior sexual history will be raised if consent is an issue at trial. An insensitive prosecuting attorney (the victim often makes the understandable mistake of viewing the prosecutor as "my lawyer") or an overbearing defense attorney can make matters worse. Perhaps the most important negative aspect of the trial is unavoidable--testimony about the assault which the victim must give on direct examination and defend on cross-examination.

Blumberg and Bohmer, co-authors of an article entitled "The Rape Victim and Due Process,"* suggest in the article that:

> (i)t is theoretically possible that the court process may have a cathartic, and hence positive, effect on the victim. On the bases of the research conducted to date it is impossible to test this theory. If the defendant is convicted, it may be psychologically beneficial to the victim that justice is done and it is seen to be done. One factor which reduces the likelihood of such benefit is that victims do not usually see the process through, and therefore do not 'see justice' done.

* appeared in Case and Comment, Vol. 80, no. 6, Nov. - Dec., 1975

If the defendant is acquitted, the impact on the victim is decidedly negative. In addition to the fear of reprisal, she feels hurt and resentment that the system has failed to right the wrong done to her; she may even experience doubt and guilt about her own conduct prior to the assault. From the victim's perspective, the criminal justice system tends to present more of an obstacle than an aid to her recovery from the trauma of a sexual assault.

4. Elimination of capital punishment for first-degree rape:

The Committee has received a substantial amount of testimony from a variety of sources which recommends abolition of the death penalty for first-degree sexual assault (first-degree rape under the current law). Several reasons were set forth in support of the recommendation.

First, an offender who commits a sexual assault may also murder his victim (and remove her as a witness against him), if there is a possibility he can receive the death penalty solely for the sexual assault. Second, imposition of the death penalty for criminal sexual assaults, even if reserved only for the most severe cases, has an adverse impact on the State's effort to obtain convictions in the remainder of sexual assault cases. Jury members tend not to convict an offender actually believed guilty, because they feel that the death penalty is too extreme as possible punishment. Prosecuting attorneys, aware that jurors often react in this manner and mindful of crowded court dockets, are discouraged from prosecuting sexual assault cases except when the victim has been so physically assaulted

that there are visible bruises, scars, or other evidence to substantiate her allegation. Law enforcement officers involved in investigating sexual assaults, whether intentionally or not, frequently try to dissuade victims from prosecuting except in the most extreme cases because of the unrealistic penalty.

Third, the possibility of capital punishment for a criminal sexual assault fosters widespread public suspicion of victims; because the penalty is so extreme, society is unduly skeptical of the victim who has not been physically battered in the course of the attack. This attitude encourages minute inquiry into a victim's behavior and character in an effort to justify an offender's conduct as provoked. Fourth, victims often refuse to report sexual assaults because of a reluctance to see their assailant receive the death penalty. Although victims do tend to favor substantial active sentences for offenders, capital punishment is so unduly severe that it "deters" them from reporting or testifying on behalf of the State.

Capital punishment appears to be generally regarded as too extreme a penalty in criminal sexual assaults in which the victim is not killed; and, retaining it as a possible penalty appears to obstruct the efforts of the criminal justice process to identify, punish, and (if possible) rehabilitate persons who commit sexual assaults.

5. An examination of the social and psychological profile of the rapist to aid in the development of appropriate sanctions and programs for rehabilitation:

Information presented to the Committee indicates that,

from the psychologist's viewpoint, there are several different classes of rapists with distinct motivational and behavioral characteristics. In general, a rapist appears to be motivated by some combination of aggressive and sexual impulses, and he is classified according to the relative strengths of each impulse. For example, one class of rapist acts primarily because of a sexual impulse; the aggresive element is secondary, and the rapist exhibits only such aggressive behavior as is necessary to complete the sexual act. At the other end of the spectrum is the rapist primarily motivated by aggressive feelings: he intends to physically injure and humiliate his victim. The sexual impulse for this offender is secondary--the sexual act is just one method of inflicting pain. Between these two extremes are one or more classes of rapist whose motivation is explained by both aggressive and sexual elements in approximately equal proportions.

Several general observations were made in testimony about rapists. A rapist usually has an adequate sexual habit or outlet. Rapists in prison are generally more intelligent than the average inmate and make a good adjustment to prison. Rapists are aware that the public has a skeptical attitude about the crime, and this diminishes the likelihood of serving an active sentence. Rape has been termed a profitable crime from this standpoint; and, once successful, a rapist may very well repeat his criminal conduct. Despite the myth that rapists act out of compulsion and cannot control their sexual urge, a substantial portion of sexual assaults are planned. A significant number of rapists commit the crime only one time

and are not regarded as either in need of treatment or dangerous from the psychologist's point of view.

On the other hand, a large percentage of rapists tend to repeat the crime: these men are generally either deficient in ethical and moral principles, immature and using the forced sex act to demonstrate "manhood," or emotionally disturbed and seeking an outlet for sexual frustrations. These men are dangerous and should be isolated from society. Although it is generally agreed that they need help, psychiatric treatment has not traditionally proven successful in reforming their behavior: there is no assurance that they will not rape again.

From the sociological perspective, the rapist usually has encountered problems since early childhood. In the classes of rapist considered most dangerous by professionals--the sadorapist and the criminal sexual psychopath--the problems during early childhood development havebeen acute. There is almost a total lack of parental love and attention. Usually, the mother has displayed complete rejection, and the father has offered no guidance on how to handle life. As a result, the rapist develops into an adult who is a loner, seeks the focus of attention, and feels a great deal of frustration in society.

RECOMMENDATIONS

RECOMMENDATIONS

The Committee studying the problems of sexual assault respectfully submits the following recommendations for consideration by the Legislative Research Commission and the 1977 North Carolina General Assembly:

1. Legislation should be enacted amending the criminal law by rewriting Article 7 of G.S. Chapter 14, which deals with rape and related offenses, in order to: distinguish more carefully the various degrees of criminal sexually assaultive conduct; establish procedural guidelines and limit the kind of evidence which is admissible in a sexual assault prosecution concerning the prior sexual behavior of the victim or the defendant; identify the relevant factors for consideration on the issue of consent; and prescribe a range of punishment for each enumerated criminal sexual assault which is appropriate for the severity of the offense and is designed so that an offender convicted of a less serious degree of sexual assault will not receive a longer sentence than one convicted of a more serious degree. "Proposal 1" in the section on PROPOSED LEGISLATION contains a draft bill prepared by the Committee which attempts to accomplish these objectives. The COMMENTARY ON PROPOSED LEGISLATION section contains a fairly detailed commentary on "Proposal 1", explaining each provision of the draft, how it relates to the other provisions, what it is designed to accomplish, and its relation to existing North

Carolina law.

2. The State should establish an agency within state government to provide needed coordination for the efforts of local rape crisis centers and other community agencies presently attempting to assist sexual assault victims in their short-term treatment long-term recovery from the trauma. Such agency should be authorized to develop or facilitate educational programs to train personnel in the handling of sexual assault victims and to make the general public aware of the problem and available community resources. Additionally, the State should appropriate funds to reimburse medical facilities for the costs incurred in examining victims of sexual assault and collecting and storing evidence for possible prosecution. "Proposal 2" contains draft legislation which presents one possibility for the creation of such agency. APPENDIX F contains a commentary prepared by the North Carolina Rape Crisis Association regarding the need for a state facilitator's office for sexual assault services and for funding of local rape crisis centers.

PROPOSED LEGISLATION

SESSION 197_7_

INTRODUCED BY:

PROPOSAL I

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY, CONSOLIDATE AND MODERNIZE THE LAW OF SEXUAL ASSAULTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes of North Carolina (G.S.) is amended by inserting therein a new article to be numbered 7A and to read as follows:

"Article 7A.

Sexual Assaults.

§14-21.1. General Definitions.--As used in this Article unless the context otherwise requires, the term:

(1) 'Child' means any person under twelve years of age.

(2) 'Permanent disability' means permanent disfigurement, or loss or impairment of the use or function of any part of the body, or psychological damage that is characterized by extreme behavioral change or severe physical symptoms.

(3) 'Sexual act' means any penetration, however slight, of the sex organs or anus of any person, by the sex organ of another person or by any object, or any contact between the mouth of any person and the sex organ of another person, whether effected by the defendant or by the victim, but emission of semen is not required.

(4) 'Sexual contact' means any touching of any person by another person when such contact is, or would appear to a reasonable person in the victim's situation to be, for the sexual arousal or gratification of the defendant or the sexual abuse of the victim.

(5) 'Weapon' means any instrument which is likely to produce serious bodily injury, permanent disability or death under the circumstances of its use, and any other object used or fashioned in such a way as to lead a reasonable person in the victim's situation to believe that such object is a weapon.

§14-21.2. Rules relating to any unconsented sexual contact or act.--(a) For the purposes of this Article, any sexual contact or act is "unconsented" whenever the victim does not have an affirmative desire to participate at the time and under the circumstances of its occurrence. Including but not limited to the following circumstances, any sexual contact or act is unconsented when:

(1) The victim's participation is procured by injuring, kidnapping, or imprisoning, or by threatening to kill, injure, kidnap, imprison, or take serious reprisal against the victim, a member of the victim's family or any other person who is present where the sexual contact or act occurs;

(2) The victim is unaware of the sexual contact or act, or is unable to appreciate its nature or consequences, or is unable to resist or communicate lack of consent to it, whether as a result of fear, unconsciousness,

ignorance, mental or physical defect or disease, or the effects of a drug, intoxicant, narcotic, hallucinogen or other similar substance administered to or taken by the victim;

(3) The victim participates as part of a medical, psychiatric, psychological or other similar examination, treatment or counseling, in which the defendant's role is recognized as unethical or unacceptable; or,

(4) The victim is a child.

As used in subdivision (1) of this subsection, 'serious reprisal' means conduct or activity which would so adversely affect a legitimate interest of the person threatened that a reasonable person in the victim's situation would participate in order to avoid such conduct or activity; provided, a reasonable person in the victim's situation would also believe that the defendant was capable of carrying out the threat.

(b) When the victim does not consent, a mistaken belief by the defendant that the victim does consent is no defense to a sexual assault in G.S. 14-21.3 unless that belief is reasonable under the circumstances. Including but not limited to either of the following circumstances, such mistaken belief is not reasonable when:

(1) At or prior to participating in the sexual contact or act,the victim communicates or attempts to communicate to the defendant, in words or acts which would be understood by a reasonable person, the fact that he or she does not consent and participates out of fear; or,

(2) The defendant's conduct prior to the sexual act or contact would lead a reasonable person in the victim's situation to believe that it is futile or dangerous to communicate or attempt to communicate such lack of consent.

(c) When the victim is a child, a mistaken belief by the defendant that the victim is twelve years of age or older is immaterial in a sexual assault unless that belief is reasonable under all the circumstances.

(d) When the victim is the spouse of the defendant, that fact is no defense to a sexual assault, provided the victim is living apart from the defendant, with intent to remain apart, whether or not pursuant to a judicial decree or written separation agreement.

§14-21.3. Sexual assaults.--(a) Every person who causes sexual contact or attempts to cause a sexual act with a child, and the child becomes permanently disabled; or who causes an unconsented sexual act with any victim, and either the victim becomes permanently disabled or any two of the other aggravating factors set out in G.S. 14-21.4 exist, shall be guilty of first-degree sexual assault and shall be punished by imprisonment for a term of not less than 30 years nor more than life.

(b) Every person who causes unconsented sexual contact or attempts to cause an unconsented sexual act with any victim, and either the victim becomes permanently disabled or any two of the other aggravating factors set out in G.S. 14-21.4 exist; or who causes an unconsented sexual act with any victim, and any one of the aggravating factors set out in G.S. 14-21.4

exists, shall be guilty of second-degree sexual assault and shall be punished by imprisonment for a term of not less than 15 nor more than 30 years.

(c) Every person who causes unconsented sexual contact or attempts to cause an unconsented sexual act with any victim, and any one of the aggravating factors set out in G.S. 14-21.4 exists; or who causes an unconsented sexual act with any victim and none of those factors exists, shall be guilty of third-degree sexual assault and shall be punished by imprisonment for a term of not less than two nor more than 15 years.

(d) Every person who causes unconsented sexual contact or attempts to cause an unconsented sexual act with any victim, and none of the aggravating factors set out in G.S. 14-21.4 exists, shall be guilty of a misdemeanor sexual assault and shall be punished by imprisonment for a term not to exceed two years or by a fine, or both.

§14-21.4. Aggravating factors in sexual assaults.--As used in G.S. 14-21.3, the terms "aggravating factors" or "other aggravating factors" refer to the following:

(1) The victim is a child;

(2) The victim either receives serious bodily injury or experiences extreme mental anguish, or both;

(3) The defendant uses a weapon; or

(4) The defendant is aided or abetted by one or more other persons actually present at the time and place of the assault.

§14-21.5. Punishment when person previously imprisoned.--

As used in this section, the term 'previously imprisoned' means having served an active sentence in any penal institution of this State or any other jurisdiction upon a valid conviction for felonious sexual assault under this Article or for rape, attempted rape, assault with intent to commit rape, sexual assault or any substantially similar crime under the prior laws of this State or the laws of any other jurisdiction. When a person has been previously imprisoned, the punishment for any sexual assault in G.S. 14-21.3 of which he or she is thereafter convicted shall be the same as the punishment prescribed for the next more serious degree of sexual assault; provided, if such previously imprisoned person is thereafter convicted of first-degree sexual assault, the punishment shall be imprisonment for life.

§14-21.6. Sexual assault prosecutions-restrictions on evidence and procedure.--(a) As used in this section, the term "sexual behavior" means any sexual activity or conduct other than the sexual contact or act which is an element of the assault alleged in a particular sexual assault prosecution. The sexual behavior of the defendant or victim is irrelevant to any issue in a sexual assault prosecution, unless such behavior:

(1) Was between the victim and the defendant; or

(2) Shows an origin of semen other than in the alleged sexual assault; or

(3) Occurred in specific instances under circumstances or as part of a pattern of behavior so similar to the alleged assault that its relevance to a material issue in such prosecution clearly outweighs any

prejudice, confusion of issues, or invasion of privacy which would result from introduction of evidence or reference to it during the proceeding.

Whenever such sexual behavior is relevant, it shall be proved only by otherwise admissible evidence of specific acts and not by opinion or by evidence of reputation or character.

(b) No evidence of sexual behavior shall be introduced at any stage of a sexual assault prosecution, nor shall any reference to such behavior be made in the presence of a jury, unless and until the court has determined that such behavior is relevant under subsection (a). Whenever any party desires to introduce such evidence or to make such reference, the party shall first apply to the court for a determination of the relevance of the sexual behavior to which it relates. The party may do so either prior to trial pursuant to G.S. §15A-952, or during the trial at the time when the party first desires to introduce such evidence or make such reference. When the application is made, the court shall conduct a voir dire hearing in chambers to consider the party's offer of proof and the arguments of counsel, including any counsel for the victim, and determine the extent to which such behavior is relevant. If the court finds that it is relevant, it shall enter an order stating what evidence thereof may be admitted, the nature of the questions which shall be permitted, and the nature of any other reference which may be made thereto. Any reference, questioning, or attempt to introduce evidence of sexual behavior not in accordance with such an order shall be punishable as a contempt of court.

(c) The record of the voir dire hearing, and all papers filed in connection with any exception to, or appeal involving, the court's determination of relevance therein, and any oral argument thereon, shall be open to inspection or attendance only by the parties, the victim, their attorneys, and the court and its agents.

(d) In a sexual assault prosecution, the victim may not be referred to as the prosecutrix or by any other term which would not be used to identify or describe the victim of any other crime, and the jury shall not be given any special cautionary instructions or admonitions which would not be given in substantially the same form, where appropriate, in any other criminal prosecution. In particular, the jury shall not be instructed nor shall it be argued literally or to the effect that:

(1) A victim who had engaged in other sexual behavior would, for that reason alone, be more likely to have consented to sexual activity with the defendant on the occasion of the alleged assault;

(2) Because of the seriousness of a charge of sexual assault or of the crime itself, the testimony of the victim should be examined with particular caution; or

(3) A charge of sexual assault is easy to make but difficult to defend."

Sec. 2. G.S. 15-166 as it appears in 1975 Replacement Volume 1C is amended in the catchline by deleting the word "rape" and inserting in its place the words "sexual assault"; further,

is amended on line two by deleting the language "rape and of assault with intent to commit rape", and inserting in its place the words "sexual assault under G.S. 14-21.3"; and, furtner, is amended on line three by deleting the word "prosecutrix" and inserting in its place the word "victim".

Sec. 3. G.S. Chapter 15 is amended immediately following G.S. 15-166 by inserting a new section to the numbered 15-166.1 and to read as follows:

"§15-166.1. Sexual assault cases- restrictions on evidence and procedure.--In sexual assault cases, the judge shall apply the restrictions on evidence and procedure set forth in G.S. 14-21.6 in the conduct of the trial."

Sec. 4. G.S. 15-169 as it appears in 1975 Replacement Volume 1C is amended on line two by deleting the language: "rape, or".

Sec. 5. Article 7 of G.S. Chapter 14 is repealed.

Sec. 6. No provision of this Act shall impair the validity of Article 8 of G.S. Chapter 14, relating to assaults generally, or of Article 26 of G.S. Chapter 14, relating to offenses against public morality and decency.

Sec. 7. This Act shall become effective on January 1, 1978, and shall only affect conduct occurring on and after that date.

INTRODUCED BY: PROPOSAL 2

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATE FACILITATOR'S OFFICE FOR SEXUAL ASSAULT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. North Carolina General Statutes Chapter _____ is amended by inserting therein a new article to be numbered _____, and to read as follows:

"Article _____.

Office of Facilitator for Sexual Assault Services.

G. S. /1/. Purpose.--The purpose of this Article is to establish an office that can facilitate and coordinate all programs and services which deal with the victim of sexual assault; to create a liaison between public services and private services with which victims of sexual assault normally come into contact; to promote a clearing house for information to all those services; to develop a support system for these services, particularly in the private sector; and, to educate the public to the phenomenon of sexual assault.

G. S. /2/. Office created.--(a) The office of Facilitator for Sexual Assault Services is hereby created in the Division of Community Assistance of the Department of Natural and Economic Resources. The office shall be under the direction and supervision of a full-time salaried State employee who shall be designated as the State Facilitator. The State

Facilitator shall be appointed by the Secretary of Natural and Economic Resources and shall receive a salary commensurate with State government pay schedules for the duties of this office, or such salary to be set by the State Personnel Board pursuant to G. S. 126-4. Necessary travel allowance or reimbursement expenses shall be authorized for the State Facilitator in accordance with G. S. 138-6. Sufficient clerical staff shall be provided under the direction of the Secretary of Natural and Economic Resources.

(b) The State Facilitator shall have administrative experience, and the recommendation of the rape crisis services of North Carolina. If possible, the State Facilitator should have public speaking experience, training in rape crisis intervention, and education in a related field.

G. S. 37. Duties and responsibilities.--The duties of the State Facilitator shall include the following:

(1) To research the needs of the State and already existing programs of sexual assault services;

(2) To be an information clearinghouse on all aspects of sexual assault services;

(3) To reimburse any county, city, or private hospital or other emergency medical facility, or any private physician for reasonable costs not to exceed Fifty Dollars ($50.00) incurred for the medical examination of a sexual assault victim when the examination is conducted in part for the purpose of gathering evidence for possible

prosecution, to the extent that funds are appropriated to the office of Facilitator for this purpose;

(4) To develop model programs and training techniques to be used to train medical, legal, and psychological personnel (both in the public and private sectors) who deal with the victim of sexual assault, and to aid in implementing these programs to suit the needs of specific communities;

(5) To be available to aid and advise sexual assault services on operational problems; and

(6) To develop and coordinate a public education program for the State of North Carolina on the phenomenon of sexual assault.

Sec. 2. (a) There is hereby appropriated to the Department of Natural and Economic Resources for fiscal year 1977-1978 the sum of $30,000.00, and for fiscal year 1978-1979 the sum of $35,000.00, to be used to support the office of Facilitator for Sexual Assault Services, and shall become a part of the base budget.

(b) There is hereby appropriated to the Department of Natural and Economic Resources for fiscal year 1977-1978 the sum of $50,000.00, and for fiscal year 1978-1979 the sum of $50,000.00, to be used to reimburse any county, city, or private hospital or other emergency medical facility, or any private physician for reasonable costs not to exceed $50.00 incurred for the medical examination of a sexual assault victim when the examination is conducted in part for the purpose of gathering evidence for possible prosecution.

COMMENTARY ON PROPOSED LEGISLATION

DETAILED COMMENTS*

ON DRAFT LAW TO CLARIFY, CONSOLIDATE AND MODERNIZE

THE LAW OF SEXUAL ASSAULTS[1]

§14-21.1

Permanent Disability

This term, and the terms "serious bodily injury" and "extreme mental anguish," are used in §§14-21.3 and -21.4 to describe the non-sexual injuries which aggravate a sexual assault. Serious bodily injury or extreme mental anguish will make a sexual assault one degree more serious than an unaggravated sexual assault; permanent disability will make the assault still another degree more serious. Serious bodily injury and extreme mental anguish have established meaning under existing case law; and they are not further defined in the draft law. Permanent disability is specifically defined in order to distinguish the injuries which are identified by this term from serious bodily injury and extreme mental anguish, and thus clearly limit the number of sexual assaults which may be placed in the first or second degree category by virtue of the victim's non-sexual injuries.

* Prepared for Legislative Research Commission Study Committee on Sexual Assaults by Committee Member Thomas J. Andrews, Associate Professor of Law, University of North Carolina at Chapel Hill.

1 In preparing the draft law and these comments, the Committee has reviewed the existing North Carolina statutes and all relevant case law precedent. It has analyzed the related laws of other American jurisdictions, giving particular attention to recent statutory revisions in law of sexual assaults. It has reviewed the United States Supreme Court cases which relate to constitutional issues presented by the draft law.

The definition of permanent disability has two parts--one dealing with physical injuries, the other with emotional injuries. Each is distinguished by its long-term nature from the relatively less serious injuries referred to as serious bodily injury and extreme mental anguish.

The first part incorporates a familiar tort and workmen's compensation definition of permanent disability. The elements of this definition are exactly what ought to distinguish the physical injuries which will doubly aggravate a sexual assault. The second part is borrowed from a recently enacted New Mexico law dealing with sexual assaults. See, N.M. Laws §40A-9-20(B). Its inclusion makes it possible to give extra aggravating effect to any particularly severe and long term emotional damage which may result from a sexual assault. The emotional injuries which amount to permanent disability are described simply as "psychological damage," but this damage must be characterized by extreme behavioral change or severe physical symptoms. While it is in the victim's interest to obtain treatment for such damage, the draft law contains no requirement that the victim do so in order for the psychological damage to constitute permanent disability. The degree of sexual assault should not turn on the victim's ability to obtain such treatment.

Sexual Act and Sexual Contact

These definitions are based on similar definitions found in the sexual assault laws recently enacted in many jurisdictions and proposed by the North Carolina Criminal Code Commission.

Compare, Colo. Laws §18-3-401(4) (5) and (6); Mich. Gen. Laws §28.788(i)(b) and (h); N.H. Gen. Laws Ch. 623-A:1(N) and (V); N. Mex. Code §40A-9-21 and 22; North Carolina Criminal Code Commission draft 314-D400(a) (1) and (2); Ohio Laws §2907.1(a) and (b); Wash. Code §9.79 140(1). They introduce two changes into North Carolina law. First, they make it possible for a sexual assault to occur whenever there is unwanted sexual activity between any two persons, regardless of the sex of the defendant and the victim, and regardless of the nature of the sexual activity. Under existing law rape (and assault with intent to commit rape) can be perpetrated only upon a female by a male and requires penetration of the female sex organ by the male sex organ. Second, these terms make possible a distinction between completed sexual activity, which involves penetration, and physical contact which is sexual in nature, but does not involve penetration.

The term "sexual act" is defined to include all types of sexual penetration, including those which are termed "unnatural" in other provisions of the General Statutes. Any sexual act may be treated as a sexual assault if it is "unconsented." Those which are unnatural but consensual are left to existing law. See Sec. 6 of the draft.

The draft's definition of "sexual act" extends to all sexual acts two well-settled principals of the law of rape--the act is complete whenever the slightest penetration occurs, and the emission of semen is not necessary to complete the act. It also makes clear that a sexual assault may be premised not only on a sexual act between the victim and the defendant,

but also on any other sexual act in which the defendant causes the victim's unconsented participation.

"Sexual contact" is distinguished from a sexual act in that it involves touching rather than penetration. The touching must be related to sexual arousal, gratification, or abuse, in circumstances where the defendant seeks to arouse himself or to abuse the victim, or where a reasonable person in the victim's situation would think that the defendant was seeking such arousal or abuse. The contact can occur when the defendant touches the victim or forces the victim to touch him or another person, or to be touched by another person.

Weapon

This definition is based on the case law definition of the term "deadly weapon" as it has been construed from the existing assault statutes. See, State v. Watkins, 200 N.C. 692 (1931). However, the term is expanded to include not only any instrument which is in fact likely to produce serious bodily injury, permanent disability, or death, but also any object which is used in such a way as to lead a reasonable person to believe it is a weapon. From the victim's point of view, when fear of injury is what induces participation in sexual activity, it makes little difference if the object which reasonably appeared to be a weapon was in fact harmless.

In §14-21.3, the word "unconsented" is consistently used to limit the sexual contact or act which is identified as an element of each sexual assault. Since this term identifies the only element which distinguishes a sexual assault from non-assaultive sexual activity, §14-21.2 contains a set of rules for determining whether or not a contact or act is "unconsented."

The word "unconsented" replaces the phrase "by force and against her will" which appears in the existing statutory definition of rape in North Carolina. However, the phrase has been interpreted by the State Supreme Court in a way which makes it synonymous with "unconsented." The Court has stated that "the phrases 'against the will of the female' and 'without her consent' mean the same thing. Any attempted distinction would be meaningless . . . ." State v. Carter, 265 N.C. 626, 630 (1965). It has held that "the force necessary to constitute rape need not be actual physical force. Fear, fright, or coercion may take the place of force." State v. Primes, 275 N.C. 61, 67 (1969). It has also said that "consent induced by fear is void and no legal consent." Id. at 67. It has recognized that "mere submission by no means necessarily involves consent." State v. Carter, 265 N.C. 626, 631 (1965). North Carolina has never required that the victim offer "resistance to the utmost," as some states have, and our Court has refused to identify any degree of resistance as that required to constitute a rape. See State v. Henderson, 285 N.C. 1, 24-25 (1974).

§14-21.2(a)

The first sentence of this subsection sets forth a controlling definition of unconsented sexual activity. An affirmative desire to participate is commonly associated with the concept of consent. For clarity, the second sentence of the subsection contains a non-exclusive list of specific factors which negate consent.

§14-21.2(a)(1) identifies the most common ways of negating consent. The courts recognize that a threat to kill, injure, kidnap, or imprison deprives participation of its consensual quality to the same extent as the actual infliction of one of these injuries, and both are included in this subdivision. The provision also establishes that a threat to take other kinds of reprisal can have the same effect. For clarity, the phrase "take serious reprisal" is used in parallel with "kill, injure, kidnap, imprison," and "serious reprisal" is then defined in the final sentence of the subsection. The definition requires a value judgment about the reprisal before a threat can make a given participation unconsented. The value judgment is whether it was reasonable for the victim to participate in order to avoid the threat, and the criterion is the conduct of a reasonable person in the victim's situation. The conduct or activity threatened by the defendant must so adversely affect a legitimate interest of the victim that a reasonable person in the victim's situation would participate in order to avoid it. It must also be one which a reasonable person would believe the defendant capable of carrying out.

The target of the defendant's threat need not be the victim. Participation is also unconsented when the person threatened is a member of the victim's family or any other person present where the participation occurs. The term "family" is not defined, to allow for case-by-case determination of whether the degree of kinship between the person threatened and the victim who participates is close enough to make the victim's participation unconsented. When the person threatened is actually present, no kinship is required, since participation may be a reasonable way to save a date or even a stranger from immediate injury, and such participation ought to be recognized as unconsented.

§14-21.2(a)(2) identifies several related victim disabilities which have been commonly recognized as being inconsistent with meaningful consent. The provision focuses on the state of mind of the victim. No person can affirmatively desire to participate in sexual activity if he or she is unaware that the activity is taking place. Additionally, a desire, no matter how affirmative it may appear, is not a meaningful consent if the victim is unable to appreciate the nature or quality of the sex act in general or of what is happening during a particular event. Similarly, if the victim lacks affirmative desire, the fact that he or she is unable to resist or to communicate lack of desire should not be construed as consent. Fear often explains why a person is unable to resist or communicate lack of consent; unconsciousness often explains why a victim is unaware of the act; mental illness or defect commonly establishes that a

victim is unable to appreciate the nature or quality of a sex act; and the person who is under the influence of alcohol or drugs is often either unaware of sexual activity, unable to appreciate its nature and quality, or unable to resist or to communicate lack of consent. However, these factors are not exclusive; whenever the victim lacks the state of mind necessary for meaningful consent, the sexual contact or act is unconsented.

The victim who is so far under the influence of alcohol or drugs as to be unable to appreciate the nature and quality of sexual activity has presented special problems under the traditional definition of rape. The laws in some states still draw a distinction between those cases where a defendant administers alcohol or a drug to a victim in order to reduce or eliminate resistance or comprehension, and those cases where the victim has taken the alcohol or drug on her own, holding that "rape" occurs only in the former situation. Under the draft law it makes no difference how the victim received the alcohol or drugs. Sexual activity with a person who does not know what is going on deserves criminal sanction as a sexual assault, no matter how the victim got into the situation. The difference between the person who creates the situation and the person who takes advantage of a pre-existing condition is not substantial enough to warrant a difference in punishment.

§14-21.2(a)(3) identifies an increasingly common set of circumstances under which a victim's participation in sexual

activity should be labelled unconsented. The draft provision is based on the recently enacted sexual assault laws of Colorado and Michigan. Colo. Laws, §18-3-403(g) & (h); Mich. G.S. §28.788(2)(1)(f)(iv). The unethical medical examination, in which a practitioner engages in sexual activity with the victim either when the victim is unaware that it is occurring, or when the practitioner has misrepresented the nature or quality of the sexual activity or its role in the examination or treatment of the victim, has appeared from time to time in the decided cases, and more frequently, perhaps,in actual practice. The increasing prevalence of sexual counseling enhances the likelihood that such unethical practices may occur in the future. Courts have had difficulty fitting the unethical medical examination cases into the traditional by "force and against her will" definition of "rape." When the practitioner actively misrepresents the nature or quality of the sexual activity or its role in the medical examination or treatment, the courts have been able to invoke the generally applicable rule that a consent obtained by the knowing misrepresentation of material facts is not a legally valid consent.

The draft law adopts a more straightforward approach. Under subdivision (3) the focus is on the role of the defendant in the medical, psychiatric, psychological or other similar examination, treatment or counseling. If that role is recognized as unethical or unacceptable, the defendant commits a sexual assault when, in that role, he or she obtains the victim's participation in sexual activity. It is appropriate that courts be guided by the ethical standards of the defendant's

profession in judging his or her conduct. These ethics provide a more consistent and general standard of criminality than does the adaptation of some less specific principle of criminal law.

§14-21.2(b)

This subsection addresses one of the most difficult problems in the law of sexual assaults. When the victim does not or cannot consent, and yet the defendant claims that he believed the victim was consenting, the courts have had difficulty in determining the effect of such mistake of fact on the defendant's criminal liability. One might acknowledge such a mistake as a defense even if it is unreasonable, or acknowledge it as a defense only if it is reasonable, or not allow it as a defense even if it is reasonable.

The draft law adopts the middle approach, which accords with the vast majority of American jurisdictions. If the victim does not in fact consent but the defendant believes the victim does consent such mistaken belief is no defense unless it is reasonable under all circumstances. If the mistake is reasonable, it is a defense to the sexual assault, although not to any crime of which unconsented sexual activity is not an element. The reasonableness of the defendant's belief is determined by whether all the circumstances would lead a reasonable person to think that the victim is consenting.

Such mistake of fact is usually asserted in those cases

where the victim's consent is negated because he or she is afflicted with a mental illness or defect or is suffering the effects of alcohol or drugs. Despite such problems, the victim might behave in a perfectly normal fashion, and the defendant might be led to believe that she is consenting. If that belief is reasonable, the defendant should not incur criminal sanctions even though his behavior may still be highly questionable on a moral basis. In such cases, the threat of punishment cannot be expected to deter the defendant from going forward or to protect the victim. Since the defendant's mistake is no defense unless it is reasonable, the threat of criminal punishment will still deter an individual from dealing with another person whose ability to consent is in any way questionable.

A mistake of fact defense is most likely to be credible when there are no aggravating elements in the assault. In these cases, the maximum punishment under the draft law is substantially less than that theoretically available under the existing law of rape. This should reduce a jury's desire to acquit a defendant on the basis of a false or unreasonable mistake of fact. With less punishment at stake, juries should be expected to make sensible determinations about the reality and reasonableness of claimed mistakes and to convict if the defendant's conduct should be branded as criminal but not warranting the extreme punishment now available under the law of rape.

The fact that the defendant used or threatened force will usually contradict any claim that he believed the victim was

consenting. However, expert testimony before the committee indicated that there are two classes of defendants who might actually believe that a victim is consenting despite the fact that they use or threaten force in dealing with the victim. Some men suffer from so serious a defect of character (which may or may not be explained by a mental disease) that they cannot believe that their own conduct, even when extremely threatening, has anything to do with the behavior of their victims, since they believe that all women secretly desire to have sex with them. Other men believe that women secretly enjoy being knocked around or forceably persuaded before engaging in sexual activity. Neither of these types should escape criminal punishment for sexual assault simply by persuading a jury that they believe the victim was consenting. Rather, the defendant's overall behavior should be tested against that of a reasonable person in the circumstances and should be regarded as criminal if it deviates from that standard.

The draft law establishes two rules to clarify the general rule of reasonableness in these cases. A mistaken belief that the victim consents is not reasonable: if the victim communicates or attempts to communicate the fact that she does not consent and participates out of fear; or, if the defendant's conduct is so threatening that a reasonable person in the victim's situation would believe that it would be futile or even dangerous to attempt so to communicate. When the victim does communicate or attempts to communicate

lack of consent, a reasonable person appreciates the risk that the victim is serious and does not proceed by force. If the defendant chooses to ignore this warning, he proceeds at his own risk. When the defendant's own behavior is so threatening as to silence a reasonable person in the victim's situation, any belief based on such silence cannot possibly be reasonable.

§14-21.2(c). Very young victims enjoy special protection under the traditional law of rape. In North Carolina any carnal knowledge of a girl under the age of twelve is a "statutory" rape, even if it is not by force and against her will. If the defendant is more than 16 years of age and the victim is "virtuous," it is first-degree rape under the 1973 amendment to G.S. 14-21.

The draft law continues to provide special protection for the very young victim. Under §14-21.2(a)(4) the fact that the victim is a child establishes that any sexual activity is unconsented. Under §14-21.3 this fact is an aggravating factor which guarantees that any sexual assault upon a child shall be one degree more serious than the same assault on an older victim. For example, even when the child's participation in a sexual act is not procured by force or threats, the defendant will be guilty of second-degree sexual assault, even though the victim experiences no non-sexual injury. The extra punishment resulting from this classification reflects the vulnerability of a preadolescent child, the particular outrage felt when such child is seduced, and the dangerousness of offenders who engage in such conduct.

Twelve has long been established in North Carolina as the age after which carnal knowledge must be "by force and against the victim's will" in order to be a rape. The draft law continues to make twelve the relevant age by defining a "child" in §§ 14-21.1(2) as "any person under twelve years of age." Twelve corresponds with adolescence in most children, and before this age the physical appearance of a child ought to signal any person that the child is not an appropriate partner for sexual activity. Beyond that age, great differences in individual rates of physical and emotional development make it impractical to classify all sexual activity with such persons as a sexual assault.

Sexual activity with a young teenager will of course be an assault if the victim does not consent. Many of the other factors in §14-21.2(a) which determine that sexual activity is unconsented will have particular applicability to a victim in the early teens. For example, the means by which the defendant procures participation may more easily be found to be a "threat to take serious reprisals" (§14-21.2(a)(1)), and immaturity may establish that the victim is "unable to understand the nature or quality of the sexual activity" (§14-21.2(a)(3)).

§14-21.2(c) deals with those cases where the victim is in fact under twelve, yet the defendant claims to believe that the victim was older. Under the prevailing common law rule (which has not been adopted or rejected in North Carolina) even a reasonable mistake as to age is no defense to "statutory"

rape. The draft law rejects this rule and treats a mistake as to the victim's age the same as any other mistake as to consent. If it is unreasonable, it is no defense. If it is reasonable, the defendant may still be prosecuted under other provisions of criminal law; or, if the victim's consent is negated by any fact other than age, the defendant can be convicted of a sexual assault without regard to the victim's age.

§14-21.2(d)

Many states have followed the common law rule that a husband cannot be guilty of rape by "enforcing" his "marital right" of sexual access to his wife. Two cases in North Carolina contain dictum to this effect, although the point has never been squarely decided here. State v. Dowell, 106 N.C. 722 (1890); State v. Martin, 17 N.C. App. 318 (1973).

It would appear to be a step backward to preclude sexual assaults among spouses at this late date in the development of North Carolina law. The committee heard testimony about cases in which the sexual nature of the attack by one spouse on another was as aggravating as if the parties had never married. This criminal behavior is not appropriately categorized or punished when the attacker is convicted only of a non-sexual assault, as is now the prevailing practice. Moreover, the committee's decision to treat rape as an aggravated assault, and to eliminate the term "rape" from the statutory vocabulary, should avoid whatever reluctance there may once have been to acknowledge rape by a spouse.

A sexual assault between spouses can occur only when the

victim is living apart from the defendant with intent to remain apart. It is the victim's action which controls; an assault can occur even though the defendant has not agreed to the separation. No particular formality is required to evidence the separation, apart from the victim's act of living apart.

§14-21.3. This provision replaces existing G.S. 14-21 and -22. It adopts the basic idea of the 1973 amendment to G.S. 14-21, which divided the crime of rape into two degrees with different punishments. It expands to four the number of available degrees, incorporates assaults with intent to commit "rape" into this overall degree structure, and identifies all the crimes with which it deals as "sexual assaults," rather than as "rape" or "assault with intent to commit rape." But it retains the format of G.S. 14-21, sets out the four degrees in order from the most serious to the least serious, and retains as much of the language of that section as is consistent with the purpose of this draft.

Proposed §14-21.3 makes a number of specific changes in the wording of G.S. 14-21, to carry out the main purposes of the draft law. The term "carnal knowledge" in G.S. 14-21 is replaced in §14-21.3 by the terms "sexual act" and "sexual contact" and the degree of the assault is made to turn, in part,on which of these sexual injuries occurs. Where G.S. 14-21 uses the term "by force and against her will" to identify the circumstances under which carnal knowledge is rape, §14-21.3 uses the term "unconsented" to define the sexual contact or act with which it is concerned. §14-21.2 establishes rules

for determining when the sexual activity of a victim is unconsented. Finally, where G.S. 14-21 recognizes the age of the victim, the defendant's use of a weapon, and infliction of serious bodily injury as aggravating factors, proposed §14-21.3 also recognizes additional aggravating factors, and gives aggravative effect to their presence in attempts, and in sexual contact assaults, as well as in assaults where a sexual act is completed.

The degrees of sexual assault in §14-21.3 fall into a simple and straightforward pattern. Sexual contact assaults and attempts to cause a sexual act are treated identically. They fall into increasingly more serious degrees of assault as aggravating factors become more numerous or severe. Assaults in which a sexual act is completed fall into the same pattern, but they begin one degree higher.

The misdemeanor degree includes only those sexual assaults where there is no completed sexual act. Sexual contact or an attempt to cause a sexual act suffices and there must be no other aggravating factor. The next more serious degree includes those sexual assaults where there is a sexual act, but no other aggravating factor. It also includes those cases where there is only sexual contact or an attempt to cause a sexual act, and one of several listed aggravating factors. The next higher degree includes those cases in which there is a sexual act plus one aggravating factor. It also includes cases where there is sexual contact or an attempt, and either permanent disability or two other aggravating factors. The

most serious degree includes those cases where there is a sexual act plus permanent disability or two other aggravating factors. It also includes cases where there is sexual contact or an attempt, and a child becomes permanently disabled.

The pattern of Sec. 14-21.3 is set forth in the following chart:

egree of Assault	Punishment	Aggravating Factors	
		In assault with sexual contact or attempt to cause sexual act	In assault with sexual act
irst-egree	Max: life Min: 30 yrs.	child, permanently disabled	any victim permanent disabled, OR any TWO of the following: -child -serious bodily injury and/or extreme mental anguish -weapon -gang
econd-egree	Max: 30 yrs. Min: 15 yrs.	Any victim permanently disabled, OR any TWO of the above factors	any ONE of the above factors
hird-egree	Max: 15 yrs. Min: 2 yrs.	any ONE of the above factors	No aggravating factors
isde-eanor	Max: 2 yrs. Min: fine	No aggravating factors	xxxxxxxxxxxxxxxxxxx

Sexual contact assaults and attempts to cause an unconsented sexual act are placed in the same degree category, because both have in common a sexual element, but both lack the especially aggravated injury of a completed sexual act. The sexual nature

of a sexual contact assault is shown by the nature of the touching between the victim and another person, but an intent to complete a sexual act is not an element of this type of sexual assault. Some defendants intend only to fondle their victims, but this type of assault is also available when the defendant's intent to go further cannot be established beyond a reasonable doubt. Under existing law, there is no sexual assault which can be established without this intent, although assault on a female (G.S. 14-33(b)(2)) is often used for this purpose. The draft law fills in this gap by providing for a range of sexual assaults whenever sexual contact occurs.

Whenever a defendant's intent to cause an unconsented sexual act is shown by some unequivocal conduct other than sexual contact, there is also a sexual assault, under the "attempt" category of the draft law. This replaces existing G.S. 14-22, which deals with assault with intent to commit rape. The draft law returns to the common law concept of attempt in order to simplify the wording of proposed §14-21.3 and to facilitate the grading of attempts on a scale parallel to that for sexual assaults in which a sexual act is complete. The term "attempt" is not defined since the elements of an attempt to commit a crime other than rape or murder are well-established in North Carolina case law. The attempt under the draft law will require an intent to cause an unconsented sexual act, just as the assault under G.S. 14-22 requires an intent to rape. Such an attempt will also require conduct which goes beyond mere preparation and comes close enough to

completion to meet the common law requirements of an attempt. These requirements are as workable as the common law elements of an assault, which are incorporated in G.S.14-22, and the use of the term "attempt" gives the draft law a more practical connotation.

The punishments under the draft law are intended to be more certain and more reliable than under existing law. Certainty is increased to some extent by establishing minimum as well as maximum terms for the three most serious degrees of sexual assault. These minima guarantee that if a defendant receives an active sentence for a serious sexual assault, such sentence will not be so short that it trivializes the assault. The minima also guarantee that no person convicted of one degree of assault can receive a shorter active sentence than a person convicted of a less serious degree or a longer active sentence than a person convicted of a more serious degree.

The maximum punishments for the less aggravated forms of sexual assault are less than under existing law. These limits reflect the consensus of the persons who testified before the committee concerning the appropriate punishment for the various degrees of sexual assault. They relate the amount of punishment to the presence or absence of aggravating factors much more clearly than under existing law. Making the punishment more nearly fit the crime should make victims more willing to prosecute and juries more willing to convict, and should also encourage plea bargains which result in conviction for crimes whose elements and penalties better reflect what the defendants actually did and the victims experienced.

§14-21.4

This section sets out the factors which aggravate any sexual assault. The presence of one of these factors moves the assault up one degree. For example, if a sexual act is complete, the assault will be second degree if the victim is a child, even if the child does not receive serious bodily injury and does not experience extreme mental anguish; it will be first degree if the child does receive such injury or experience such anguish. Similarly, if the victim is an adult, such an assault will be second degree if a lone defendant uses a weapon, even if the victim receives no serious bodily injury and experiences no extreme mental anguish; and it will be first degree if the victim experiences either. If the defendant uses a weapon and is aided by others, such an assault will also be first degree.

The aggravating factors listed in this section reflect the consensus of testimony before the committee concerning those elements which increase the severity of a sexual assault. The reasons for aggravating by one degree all assaults on people under twelve years of age are given in the comment to §14-21.2. Serious bodily injury and a weapon are already recognized as aggravating factors under existing law, G.S. 14-21(a). Extreme mental anguish is added as an aggravating factor to reflect the views of most victims. However, serious bodily injury and extreme mental anguish are not identified as separate factors in the draft--the existence of both does not further aggravate an assault. The gang assault is a particularly threatening type of assault, and the addition of this

factor is meant to guarantee that each member of the gang will receive extra punishment for any assault which he or she commits as a principal, whether or not he or she is separately sentenced for aiding or abetting the assaults of the others.

Under the draft law, the occurrence of serious bodily injury or the use of a weapon automatically aggravates a sexual assault. It is not necessary that the victim have "her submission procured by" the infliction of the injury or the use of the weapon as is required under the 1973 amendment to G.S. 14-21. The procurement element is hard to prove, has nothing to do with the victim's injury or the defendant's culpability, and is deliberately eliminated.

§14-21.5

This section is both an authorization for, and a limit on, increased sentences for sexual assault repeaters. Such repeaters demonstrate a habit of behavior which expert witnesses before the committee termed highly dangerous and virtually incurable. Extended, protective incarceration is highly appropriate upon a second conviction of a sexual assault, and should be mandated regardless of when or where the first conviction occurred. On the other hand, before the most extreme punishment for the most serious degree of sexual assault is imposed, a propensity of repeating must be shown in addition to the other aggravating factors which place the assault in the highest degree.

§14-21.6

This section is designed to improve the conduct of sexual

assault prosecutions in North Carolina. The Supreme Court of North Carolina, in a statement given to the committee on December 8, 1976, noted that it agrees in principle with this section and believes that some law along its lines is appropriate.

The witnesses who appeared before the committee persuaded it that sexual assault prosecutions are too often conducted in a way that embarrasses or intimidates the victim beyond the defendant's legitimate interest in a fair trial. The chief evil is the use of evidence of irrelevant sexual behavior to influence the court and jury, not because it is logically related to any material issue in the proceeding, but because it creates prejudice against the person whose sexual behavior is so demonstrated. When this happens, a cardinal rule of North Carolina evidence and indeed of American jurisprudence is violated: that no evidence should be introduced in any courtroom proceeding when its prejudicial effect outweighs its logical relevance to the issues in that case. In a sexual assault prosecution the concept of relevance is easily confused with the factors which make this evidence prejudicial, and therefore the basic rule of relevance can easily be violated, often unwittingly, by judges, attorneys, and others.

A relevance problem is usually presented when the defendant seeks to introduce evidence of the alleged victim's behavior, reputation, or character in sexual matters, but it can also arise when the prosecution seeks to introduce similar evidence against the defendant. The victim's behavior may consist of

specific acts of consensual sexual conduct engaged in under circumstances very similar to those of the alleged assault or as part of a pattern which the alleged assault may also follow. More often, the behavior is less specific and more remote in place, time, and circumstance from the alleged assault. It may consist of no more than the fact that the victim has engaged in consensual sexual activity with some other person, perhaps with a close personal friend, at some remote time in the past, or that the victim was sexually involved with some person other than the defendant at the time of the assault. Still more often the evidence does not concern any specific behavior or relationship, but shows only that the victim has a reputation for promiscuity, or otherwise has negative character traits in the area of sexual morality.

The more generalthe evidence of other sexual activity, the more difficult it is to discern its logical relevance in a given prosecution. In many cases the evidence is so general and so remote that it could not possibly have any logical bearing on any issue in a case, no matter what version of the facts is accepted by the court or jury. Indeed, such general evidence appears to be admitted in many cases only on the silent assumption that the bad moral character or immoral behavior of a person, and especially of a woman, is in some unspecific way, always relevant in any sexual assault prosecution.

In most cases, this general assumption has no factual or logical basis. The fact that a person is sexually promiscuous does not, without more, have any bearing on her general credibility as a witness, since it cannot convincingly be asserted

that a person who is promiscuous is, therefore, less likely to be truthful as a witness. If sexual immorality were really related to truthfulness, one would expect evidence of such immorality to be introduced to impeach the credibility of any witness in any trial and not just in sexual assault prosecutions; yet it would be absurd to attempt to impeach the chief witness in a bank robbery case simply by showing that she is sexually promiscuous. Moreover, a victim's sexual character or general sexual behavior does not, without more specific detail, necessarily establish any bias against the defendant in a particular assault prosecution, nor does it reveal, by itself, any other motive to fabricate an assault or to alter the significant facts of an actual encounter. Finally, a bad sexual character or remote sexual activity does not of itself demonstrate such a general tendency to consent to sexual activity that the victim would do so under any and all circumstances. To the contrary, in most alleged sexual assaults, the circumstances are so dissimilar from those under which the victim may have engaged in consensual sexual behavior in the past as to support rather than to question the assertion that the victim did not consent during the assault.

But general evidence of sexual character or morality, or of behavior under remote circumstances, is too often persuasive, not because its relevance can logically be supported on any of the theories discussed and rejected in the preceding paragraph, but simply because it does create a negative attitude towards the complaining witness in the minds

of those members of the jury. Jurors and others who believe that a woman who is not "virtuous" must be the kind of person who would consent under any circumstances or at least one who brings assaults on herself by encouraging them by her behavior, use this prejudice to rationalize a not guilty verdict. They do so, not because they really think no assault has occurred, but because they think the victim deserved it, no matter how serious it was.

To avoid this prejudice, evidence of sexual behavior should not be admitted in a sexual assault prosecution unless it deals with specific conduct which was engaged in under circumstances which are similar enough to those which may have existed in the alleged assault so that the legitimate relevance of that activity clearly outweighs its possible prejudicial effect. Such a limitation is more consistent with the spirit of North Carolina's traditional substantive law defining the elements of rape, and with the elements of the sexual assaults in the draft law, than any more permissive rule would be. It has long been recognized that a woman can legally and factually be raped regardless of her moral character, promiscuity, or other sexual activity. State v. Long, 93 N.C. 542 (1885). A rule of evidence which would allow proof of these matters is thus to some extent always in conflict with the substantive law. The conflict is heightened in those cases in which the principal impact of such evidence on a jury is to elicit the very prejudices which the court has rejected in creating this substantive rule.

There are also practical reasons for making a clear statutory

statement that the other sexual behavior of the victim or the defendant is irrelevant unless it is specifically identified and its circumstances demonstrate some specific rational relationship to the assault in question. First, such a rule expresses the best common sense judgment of our people in these matters. The prejudices to which more general sexual evidence appeals, though still prevalent, are held by a decreasing minority of our citizens. Most North Carolinians of good will do believe that an assault should be judged on its own merits regardless of the character of the victim.

A clear rule is also necessary to make the punishment for sexual assaults more certain. Expert witnesses told the committee that many perpetrators of sexual assaults are highly calculating individuals who are made bold to commit this sort of crime because the risk of conviction is unusually low. They cynically calculate that any supposed defect in the character of one of their victims will let them escape punishment if it is allowed to play on the prejudices of even a small minority of a jury. Yet these perpetrators are also highly dangerous individuals who pose a threat to all members of the community. When they escape punishment on irrational grounds, they needlessly continue to threaten even the "virtuous" members of the community. Eliminating the opportunity for them to appeal to pure prejudice makes the punishment for this crime a measurably more credible deterrent.

Third, a clear statutory statement is necessary to give assurance to the victims of sexual assaults that the ordeal of a criminal prosecution will not be unnecessarily exaggerated

by subjecting them to a seaching hostile inquiry into irrelevant character traits or sexual behavior. The public interest in the swift and sure apprehension, conviction, and punishment of those persons who commit sexual assault is frustrated enough by the natural reluctance of many victims to relive the experience itself by testifying about it in court. This interest should not be further frustrated by a legislative silence which may confirm their fear that the decision to prosecute will trigger an extended inquiry into collateral matters.

Finally, a clear statutory statement is necessary to give appropriate guidance to courts, prosecutors and law enforcement personnel in this difficult area. This is not to say that the fair trial goal of this section could not be achieved within the framework of the existing rules of evidence and courtroom procedures in North Carolina. The committee recognizes that trial judges in North Carolina have the power to exclude irrelevant evidence within the framework of existing procedures and that many are doing so. However, uncertainty about what the rules of evidence are with respect to other sexual activity, coupled with a natural judicial tendency to avoid prejudicial error could, without a clear statute, lead to the continued introduction of irrelevant evidence even when its irrelevance and prejudice are clear.

§ 14-21.6(a) begins with a broad definition of "sexual behavior " which encompasses all sexual activity or conduct ever engaged in by either the defendant or the victim on any

occasion other than that alleged in a particular criminal proceeding. The second sentence states that the sexual behavior of the victim or the defendant is irrelevant unless it fits into one of three specific categories of sexual activity. In this way, the draft law completely rejects the notion that all sexual behavior, however proved, has some intrinsic relevance in a sexual assault proceeding, and requires a more specific showing of relevance before such behavior can be proved.

The three exceptions to this statement of irrelevance are designed to permit introduction of evidence of sexual behavior in those cases where the rational probative value of that activity outweighs its potential prejudicial effect. Each requires some specific similarity between the sexual behavior and the assault in question before any of the behavior is deemed relevant.

The first exception applies to all sexual behavior between the defendant and the victim. The draft law opts for blanket treatment of this type of behavior despite the possibility that in some cases even it may be irrelevant. The fact that the defendant and the victim have previously engaged in sexual relations is likely enough to demonstrate some particular bias of the victim against the defendant, or some particular motive to falsify an accusation or alter or misinterpret the facts of an encounter between them, that evidence of this type of activity ought to be admissible. This behavior is also less likely to create the kind of prejudice which sexual behavior of a more general nature might create.

The second exception is equally simple. In many sexual assault prosecutions, the victim's testimony that she was assaulted and that a sexual act occurred is corroborated by the presence of semen a short time after the alleged time of the assault. The semen corroborates the assault only if there is no alternative explanation for its presence. However, when there is sexual behavior which could as well explain the presence of the semen, then this evidence is relevant, not because it shows that the assault did not occur, but because it at least calls into question this particular corroboration of the victim's testimony.

The third exception applies to all sexual behavior which does not fall within one of the first two exceptions. Such sexual behavior is relevant, if at all, only when the particular circumstances under which specific acts were carried out were so similar to those of the alleged assault that they help to demonstrate either that the victim may have a bias against the defendant, or that the victim may have some other motive falsely to accuse the defendant or to alter or misconstrue the facts of a given encounter or that the victim may have consented despite the presence of facts which would ordinarily negate consent.

Even when the circumstances of sexual behavior make it specifically relevant to one of these material issues in a case, evidence of it may not be introduced unless its probative value outweighs the prejudice or confusion of issues which may result from the jury's knowing about it. The trial judge must engage in a balancing process, weighing the specific

factors which connect particular activity to a material issue against the prejudice which that activity might create, before admitting any evidence of the activity. This is the classic function of a trial judge making any relevance determination.

Since this subsection deals only with sexual behavior, its declaration of irrelevance has nothing to do with behavior which is non-sexual in nature. For instance, the fact that the victim has made false accusations of sexual assault in the past is not a sexual activity, and, therefore, the fact that the accusation has been made is not declared irrelevant by this subsection. The same would be true for other specific conduct which, although related to sexual behavior, would be something other than the actual participation in sexual activity.

The draft law's approach to relevance falls somewhere in the middle of the range of approaches found in other states. Since 1974, at least twenty-six other states, including Tennessee, Florida, Louisiana, and Texas, have enacted statutory provisions which specify in one way or another the extent to which evidence of sexual behavior may be admitted in a sexual assault prosecution. Many other states, including South Carolina and Georgia, have similar provisions under active consideration. No two enactments in the other states are alike and they all vary greatly in the extent to which they permit the introduction of such evidence.

The draft law rejects the approach of some states, such as Michigan and Oregon, which absolutely prohibits the introduction of any evidence of sexual behavior other than that between the

victim and the defendant or that which shows an alternative source of semen. While any evidence of activity between the alleged victim and a person other than the defendant carries some potential for irrelevant prejudice, there are cases in which such behavior has a relevance which is not rooted in prejudicial assumptions. If so, it ought to be proved.

The draft law also rejects the approach of some other states in which a rule of relevance is stated only in the most general terms and the cases in which evidence of sexual behavior may be found relevant are not specified in any way. The committee is convinced that it is necessary to identify those kinds of cases in which sexual activity can be relevant, and that the three exceptions stated in subsection (a) appropriately do so.

The rule of relevance stated in §14-21.6(a) is wholly consistent with the constitutional rights of a criminal defendant. There is no constitutional right, either in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process Clause of the Sixth Amendment, to introduce evidence of irrelevant facts. Moreover, the concept of relevance, as expressed in the American common and statutory law of evidence, is so rooted in evolving community standards that it is doubtful that the Supreme Court of the United States would reverse North Carolina's legislative assessment of relevance in this highly sensitive area. No Supreme Court case has held that a defendant is entitled to introduce irrelevant evidence, and none calls into question this legislature's power to enact a common sense rule of relevance to apply to

the trial of criminal assault prosecutions in our own courts.

The last sentence of §14-21.6(a) provides that sexual behavior, when relevant, shall be proved only by evidence of specific acts and not by opinion evidence or evidence of reputation or character. The circumstances of a specific act or acts obviously cannot be known unless the process of proof starts with the fact itself and not some more general opinion, character, or reputation evidence. Since reputation and character reflect the general conclusions of many persons as interpreted by a particular character witness, the testimony usually discloses nothing about the specific circumstances of any of the acts upon which the reputation may be based. Even if he is specific, a reputation or character witness has only second- or third-hand knowledge of such circumstances and his testimony should have very little probative value. Not only does this sort of evidence prove little or nothing, its non-specificity makes it highly prejudicial, especially when its adverse impact is compounded by innuendos, voice inflections and expressions which do not appear in the written record of the trial.

The provision that other sexual activity must be shown by evidence of specific acts, and not by opinion or evidence of character or reputation, is a departure from existing practice. Under existing law some latitude is given to a character witness to specify the particular character trait for which a witness has a bad or good reputation, and this latitude can lead to the introduction of evidence that the alleged victim of a sexual assault is in some unspecified way

a sexually immoral person. State v. Hairston, 121 N.C. 579 (1892). Yet paradoxically, a defendant may seldom, if ever, offer direct evidence, other than through cross-examination of the alleged victim, to show any specific sexual acts, no matter how similar their circumstances may be to those of the alleged assault, State v. Arnold, 146 N.C. 602 (1908); State v. Bowman, 232 N.C. 375 (1950). One reason for such a rule is said to be to protect the alleged victim from having to refute unanticipated false accusations of sexual behavior. 1 D. Stansbury, North Carolina Evidence, Sec. 111 (Brandis Rev. 1973). But the issues raised by such activity are also called "collateral," id., indicating that the real concern is not that the evidence is likely to be false, but that the acts are likely to be irrelevant. The draft law addresses this concern more directly, when it requires that the acts themselves be shown relevant before they can be proved in any way. If they are not, they cannot be shown, by cross-examination of the victim or otherwise. But if they are, it is very important to determine whether or not they occurred, and the draft law will permit that inquiry. Any fear that such a rule will encourage friends of a defendant to testify falsely to consensual activity with the victim under similar circumstances ought be alleviated by strict enforcement of the laws of perjury, and not by creating anomalies in the law of evidence.

§14-21.7(b) creates a simple procedure for determining the relevance of sexual behavior before evidence is introduced or reference to it is made in the presence of the jury. The first sentence states that the determination of relevance must

be made before the evidence is offered or the behavior is referred to in the jury's presence. This requirement simply reflects what is commonly recognized by all lawyers and judges: that a judge's instruction to disregard inadmissible evidence can never entirely cure the impact of its original introduction or even of a question referring to it. When the reason for ruling the evidence inadmissible is its possible prejudicial impact on the jury, it is especially important that the jury hear nothing of it until the court has determined that its probative value outweighs that prejudice.

The second sentence of this subsection establishes the procedure by which any party who wishes to introduce evidence of sexual behavior may apply to the court for a determination of relevance. An application may be made at any time up to and including the moment before the party desires to introduce the evidence. In this respect, the draft law is more flexible than similar provisions in other states, many of which require that a formal motion be submitted, often as much as 30 days in advance of trial. The committee believes that such a rigid procedure could raise serious constitutional problems (see, e.g., Wardius v. Oregon 412 U.S. 470 (1973)) and would be foreign to North Carolina procedure where motion practice is much less formal than it is in many other jurisdictions. The draft law requires only that the court be asked to determine relevance before any effort is made to introduce evidence in court. The application contemplated by this sentence may be written or oral, formal or informal, so long as it is made out of the presence of the jury and gives the court and the other

parties reasonable notice of the kind of sexual behavior which the court is being asked to rule relevant.

The third sentence of this subsection provides that the determination of relevance shall be made after a voir dire hearing conducted in chambers. Existing law recognizes that the victim's recital of the facts of a sexual assault can be so personal, traumatic,and unsettling that it should be done only in the presence of the court, its officers, the jury, the parties and their counsel. Under present G.S. 15-166 a court has the power to exclude bystanders from the trial of a sexual assault prosecution during the testimony of the alleged victim, even when that testimony is obviously relevant. There is even greater reason for the court to conduct in chambers the hearing which determines the issue of relevance in the first place, since the prejudicial effect of the sexual behavior is the very reason for keeping it from the jury. If the court determines that it is irrelevant it ought never be made public.

The draft law recognizes the victim may have a real interest in the question of relevance even though the only formal parties to a criminal prosecution are the state and the accused. Evidence which could prejudice the jury would also most certainly embarrass the victim, or invade a legitimate privacy interest. Therefore, when the victim has retained separate counsel, that attorney should be heard on the issue of relevance, along with the prosecutor and the defendant's attorney.

The next to last sentence of this subsection requires the court to determine in advance what questions shall be asked,

in order to avoid straying into irrelevant areas during the trial. The last sentence confirms the only meaningful sanction for keeping a trial within the area of relevance determined by a trial judge by providing that an attorney who tries to introduce evidence, ask questions, or make arguments which relate to sexual activity that has not been determined relevant by the trial judge may be punished for contempt.

§14-21.7(a) deals with those cases in which the trial judge determines that certain sexual behavior is irrelevant, but the defendant objects to that determination and appeals. If the trial judge's determination is affirmed, the evidence never will be presented to a jury and there will be no opportunity for it to become public. If the trial judge's determination is reversed and there is a new trial, then the new trial will be the appropriate time and place for making that activity public. In the interim, the status quo should be maintained and the draft law simply provides the means for doing so.

§14-21.7(e) is designed further to improve sexual assault prosecutions. Many witnesses who appeared before the Committee were concerned or angered by the apparent negative connotations of the term "prosecutrix " when it is used to describe the alleged victim of a sexual assault. As far as the committee could tell, the parallel term prosecutor is never used to describe the male complaining witness in any case, nor is the term prosecutrix used except in criminal proceedings which involve sex crimes. To the extent that the use of this term sets apart the alleged victim of a sexual assault in a way

which might seem derogatory, it should be abandoned.

The rest of this subsection eliminates certain special instructions which are sometimes given in sexual assault prosecutions. The Committee did not learn how often, if at all, such instructions are given in North Carolina. It is persuaded that if they are given, they should be eliminated, since they blatantly express the kind of prejudicial assumptions about sexual behavior which this section is designed to eliminate entirely from sexual assault prosecutions.

Sec. 2 of draft

Sec. 2 of the committee's "Proposal 1" amends present G.S. 15-166 by changing certain words and phrases to make them consistent with Section 1 of the draft. "Rape and assault with intent to commit rape" is changed to read "sexual assault under G.S. 14-21.3." The term "prosecutrix" is converted to "victim."

Sec. 3 of draft

Sec. 3 of "Proposal 1" creates a new section, G.S. 15-155.1, in the statutory chapter on criminal procedure. The draft sets forth certain restrictions on evidence and procedure in criminal sexual assault prosecutions, and the statute containing these restrictions is new G.S. 14-21.6. The committee elected to include this statute within Article 7A of G.S. Chapter 14 because the provision is related exclusively to prosecutions under that Article and because the provision is necessary to a thorough understanding of the new Article. However, the committee believed it would be useful and proper to have a cross-reference in the

G.S. Chapter entitled "Criminal Procedure". The most logical location within that Chapter appeared to be immediately following G.S. 15-166 which deals with excluding bystanders in rape trials. G.S. 15-166.1, therefore, is created as a cross-reference to G.S. 14-21.6.

Sec.4 of draft

Sec. 4 amends present G.S. 15-169 by deleting the term "rape". This is intended to be consistent with Sec. 1 of the draft which eliminates that term from the statutory criminal law.

Sec. 5 of draft

Sec. 5 repeals present Article 7 of G.S. Chapter 14. Sec. 1 of the draft creates a new Article 7A in place of the repealed article.

Sec. 6 of draft

Sec. 6 is included to spell out that the draft legislation does not repeal, directly or by implication, Articles 8 and 26 of G.S. Chapter 14.

Sec. 7 of draft

Sec. 7 establishes January 1, 1978, as the effective date, and states that the legislation only affects conduct occurring on and after that date.

APPENDICES

APPENDIX A

LEGISLATIVE RESEARCH COMMISSION ON SEXUAL ASSAULTS

Senator William D. Mills, Chairman
P. O. Box 385
Swansboro, N. C. 28584
919-326-8743

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P. O. Box 904
Belmont, N. C. 28012
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Senator John W. Winters
507 E. Martin Street
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APPENDIX B

LIST OF PARTICIPANTS AT COMMITTEE MEETINGS

Meeting - October 28, 1975

Organizational meeting and review of study committee budget

Meeting - January 29, 1976

Dr. Elaine Hilberman, UNC Department of Psychiatry & Medical Director with N. C. Memorial Hospital Rape Crisis Program

Judith Kraines, Director of Chapel Hill-Carrboro Rape Crisis Center

Teme Reice, Social Worker with N. C. Memorial Hospital & Director of Education & Training with N. C. Memorial Hospital Crisis Program

Dr. Mary Susan Fulghum, on Staff of Obstetrics & Gynecology UNC-Chapel Hill

Bud Brexler, Director of Safety & Security at N. C. Memorial Hospital

Dr. Page Hudson, Chief Medical Examiner

Meeting - March 15, 1976

Professor Barry Nakell, UNC School of Law, Chapel Hill

Robert Farb, Assistant District Attorney in Durham

William Crumpler, Attorney and former District Attorney

A. B. Coleman, Attorney and Ex-State Senator

Adam Stein, Chapel Hill Attorney

Jim Luginbuhl, Professor of Psychology, N. C. State University

Mrs. Jean Boyles, Attorney, Chapel Hill Police Department

Kurt Stakeman, Raleigh Police Attorney

List of Participants at Committee Meetings - Continued

Captain Jim Stell, Sergeant Gary Black, Detective Bob Freeze, Officer T. W. Gardner with Raleigh Police Department

Sue Lyons, Training Coordinator, Salemburg Justice Academy

Meeting - April 22, 1976

Dr. Paul Fiddleman, Associate Professor, UNC Department of Psychology

Dr. Richard Felix, Staff Psychiatrist, Department of Corrections

Dr. Bob Rollins, Director of Forensic Services, Division of Mental Health Services, Department of Human Resources

Meeting - June 24, 1976

Dr. Bill Barber, North Carolina Criminal Justice Academy

Dr. Paul Fiddleman, Associate Professor, UNC Department of Psychology

Dania Southerland, Legislative Coordinator for N. C. Rape Crisis Association

Meeting - September 2, 1976

Review of first draft of legislation and committee made recommended changes

Meeting - September 20, 1976

Review of first revised draft of legislation and committee made recommended changes

Meeting - September 28, 1976

Review of second revised draft of legislation and committee made recommended changes

Meeting - December 8, 1976

Franklin Freeman, Administrative Assistant to Chief Justice to Chief Justice Susie Sharpe & Assistant Director of the Administrative Office of Courts

Randolph Riley, Assistant District Attorney in Wake County

Keith Teague, District Attorney in Elizabeth City

Paul Lawler, North Carolina Student Legislature

List of Participants at Committee Meetings - Continued

Joyce Davis, State Rape Crisis Association and Attorney in Raleigh

Reece Trimmer, Police Attorneys Association & Police Legal Advisor for City of Durham Police Department

Debra Kay, Carrboro-Chapel Hill Rape Crisis Center

Barbara Donadio, Outpatient OB-GYN Department, North Carolina Memorial Hospital

Dania Southerland, Legislative Coordinator for N. C. Rape Crisis Association

Meeting - December 9, 1976

Discussion and recommendations were made to be incorporated in the committee report; final changes and recommendations were made to the draft proposal

APPENDIX C

Summary of NCSU Social Psychology Program research into sexual assaults

APPENDIX C-1

Progress report on rape research
March 1975

During the past year research has been carried on within the social psychology program at North Carolina State University dealing both with the victims of rape and with the rapist. Our findings have implications for (a) what evidence should be admissable in a rape trial, and (b) the effects of various penalties for the crime of rape. In this research college students have been presented with a fairly detailed description of a rape including descriptions of the victim and the accused, a police report, summary of the victim's testimony, summary of the testimony of the accused, report of the medical examiner, and the judge's instructions to the jury. Students then make judgments about both the victim and the accused.

One experiment, conducted by Coty Mullin, was concerned primarily with the effect that a victim's respectability would have on others' perceptions of her. We varied the respectability of the victim so that some subjects thought she was a novice Nun (high respectability) while others were told that she was a topless dancer (low respectability). (The respectability information was contained within the police description of the victim.) Our findings were (a) that the unrespectable victim was blamed for being raped, but it was primarily her character that was blamed (i.e., she was a bad person); (b) that the respectable victim was also blamed, but it was primarily her behavior that was blamed (i.e., she shouldn't have been walking alone across campus at night); (c) that the rape was seen as more psychologically damaging to the respectable than to the unrespectable victim; and (d) that the rapist received a harsher penalty when the victim was respectable.

A second experiment, conducted by Jeff Frederick, confirmed the

basic results of the first, but it also assessed the effects that different penalty options had on the students who were acting as jurors. After reading about a rape, subjects were assigned to one of three groups, with each group having different options as to the treatment of the accused. For Group A these options were: not guilty, 15 years imprisonment, life imprisonment, or the death penalty; for Group B they were: not guilty versus life imprisonment; for Group C they were: not guilty versus the death penalty.

Turning first to the percentage of convictions, we found that convictions were obtained in Group A 57% of the time, in Group B 52% of the time, but in Group C only 34% of the time. In other words, when the only alternatives were not guilty versus the death penalty there was a 34% conviction rate; when alternatives in addition to the death penalty were available, the conviction rate jumped to about 54% (combining Groups A and B).

Subjects who voted "not guilty" were asked whether they thought that the accused had committed the rape, even though they voted to acquit him. Combining Groups A and B (which had almost identical results), we found that 59% of the subjects said yes, they thought he had committed the rape, and 41% said no, they thought he hadn't. Presumably, these 59% thought that the evidence was not sufficient to warrant conviction. In Group C, however, a full 78% of the subjects thought he had committed the crime, only 22% thinking he had not. The additional 20% who thought the accused had committed the rape, but who were unwilling to convict him, were apparently reluctant to convict due to the automatic imposition of the death penalty.

We feel that the results of both these experiments have implications

for the handling of rape cases. Our data from the first experiment suggest that information about the respectability of a rape victim can have a major influence on the outcome of a trial. The respectable victim was seen as a good person who suffered severe psychological damage as a result of behaving a little carelessly, and the person who caused this damage (the rapist) should be severely punished. In contrast, the unrespectable victim was seen as not having suffered so greatly and also as more "deserving" of her fate because of the kind of person she was; consequently, the rapist was treated less harshly. These findings indicate that evidence as to the respectability of a victim in a rape trial should be admissable only insofar as it has a direct bearing on the case.

The results of the second experiment can be taken in support of eliminating the death penalty for the crime of rape. Our subjects were much more reluctant to convict when the penalty was death. Where this is the case in real life, people guilty of rape might go free. On the other hand, since those who are opposed to the death penalty are generally removed from a jury where the death penalty might be imposed upon conviction, juries in such capital cases could easily end up being biased against the accused. Neither of these circumstances results in a fair trial.

For more information contact: Dr. James Luginbuhl, Department of Psychology, N. C. State University, Raleigh, NC 27607. (Phone: 737-3309).

Updated Progress Report
February, 1976

A second experiment focusing on the impact of a rape victim's respectability has confirmed most of the findings of the first experiment by Coty Mullin described in the March 1975 progress report. In the second experiment the victim was even less respectable: she was described as a topless dancer, divorced, and out on bail awaiting trial for possession of heroin with intent to sell. Again, the victim was seen as a worse person, was seen as experiencing less psychological damage, the penalties to the rapist were less severe, and the character of the victim was blamed more when she was unrespectable as opposed to when she was respectable. (the respectable victim this time was described as a social worker living with her husband). We failed to obtain significant main effects for behavior blame. Two other studies have also shown the character blame effect but have yielded ambiguous results about behavior blame.

One other set of results in the second experiment is quite intriguing. Males blamed the victims more (both their behavior and their character) than did females. It appears that they, more than females, needed to find some way of making the victim responsible. In addition, males were considerably more influenced by the respectability of the victim than were females, and they looked with apparent special disfavor upon the unrespectable rape victim. Example 1: Subjects were asked to specify a prison sentence (1-99 years) for the rapist. The average number of years given by all females and by males when the victim was respectable was 50 years, but males gave an average of only 17 years penalty to the rapist of an unrespectable woman! This interaction is significant at the .05 level. Example 2: For females, the perceived drop in presumed psychological damage to the unrespectable as opposed to the respectable victim was about 5 points (on a 21-point scale); for males the drop was 9 points. This interaction was significant at the .15 level. Example 3: All females, and males responding

to the respectable victim, placed 2-3 times as much blame on the victim's behavior as on her character, whereas males placed equal blame on the unrespectable victim's behavior and character. This interaction is significant at the .06 level.

There is one addition to the results reported for the experiment conducted by Jeff Frederick. Of those who found the defendant not guilty, 17 believed in the use of capital punishment while 36 did not. The figures are almost reversed for those who found the accused guilty; 29 favored capital punishment while 20 did not ($X^2 = 7.56$, $df = 1$, $p < .01$). This positive relationship between willingness to convict and belief in capital punishment means that the exclusion from a jury of those opposed to capital punishment could bias the potential outcome of a trial.

In another experiment, designed by Jeff Frederick, the respectability of the defendant (a rapist) was manipulated (he was described either as a junior bank executive or as a handyman at a local mill). The impact of the defendant's respectability was considerable. The high respectable defendant was found innocent by 37 subjects and guilty by 19, whereas the low respectable defendant was found innocent by 28 and guilty by 28 subjects ($X^2 = 2.97$, $df = 1$, $p < .08$). Put differently, half of the subjects confronted with an unrespectable defendant found him guilty, but only one third of those confronted with a respectable defendant found him guilty. Subjects were later given the option of assigning penalties to the defendant, all the way from not guilty to guilty with the death penalty. When given this choice, subjects assigned more severe penalties with increasing frequency to the unrespectable defendant and with decreasing frequency to the respectable defendant.

Finally, subjects were asked to assign a certain percentage of blame for the rape to the defendant, ranging from 0% to 100%. The table below shows the distribution of blame.

Numbers of Subjects Assigning Blame
as a Function of Defendant's Respectability

	Percent Blame	0-70%	80%	90%	100%
Respectability of the defendant	High	5	3	10	5
	Low	0	8	10	15

Five subjects attributed less than 80% of the blame to the high respectable accused versus no subjects for the low respectable accused, whereas 15 subjects blamed the low respectable accused completely for the rape as opposed to only 5 when he was high respectable, ($X^2 = 7.90$, $df = 3$, $p < .05$).

The results from our research confirm the previous conclusions that the respectability of a rape victim could be a major factor in the outcome of a trial, as can the nature and severity of the penalty options available to the jury. Our more recent research also indicates (1) a particularly unfavorable view by males of an unrespectable rape victim, and (2) that an accused rapist of low respectability is likely to fare worse in the courts than one of high respectability.

For more information contact: Dr. James Luginbuhl, Department of Psychology, North Carolina State University, Raleigh, North Carolina 27607.

APPENDIX D

PRESENTATION TO LEGISLATIVE COMMISSION - APRIL 22, 1976

Bob Rollins, M. D. *

In the 1930's sexual psychopath laws were enacted and are now existent in thirty-one states. These laws refer to categories described variously as sexual psychopaths, sexually dangerous persons, mentally disordered sex offenders, or defective delinquents.

The goals of such legislatior are:

(1) impose longer sentences for sexually motivated crimes;

(2) provide treatment for persons who are mentally ill and who commit sex crimes.

The sex offender is a person who commits a sexual act forbidden by law and is apprehended by the police.

Sexual Psychopath - one lacking the power to control his sexual impulses or having criminal propensities toward the commission of sex offenses.

Sex Psychopath Statutes:

(1) usually create a legal status of psychopathy, which medical and legal authorities have to determine jointly;

(2) persons considered legally insane, psychotic, or feeble-minded do not fall under the above term;

(3) require that there be a history of past sexual crimes, as well as the assumption of criminal propensities to commit such offenses again:

(4) offenders so classified are a danger to others;

(5) provide for commitment to a treatment facility on an indeterminate basis until treating authorities recommend release.

* Director, Forensic Services, Division of Mental Health Services, North Carolina Department of Human Resources.

These laws represent two approaches. The first deals with sexually motivated, disordered offenders. A typical statute provides for the commitment for an indeterminate term of one day to life of any sexually dangerous person, that is:

Any person whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive behavior and either violence, or aggression of an adult against a victim under the age of sixteen years, and who as a result is likely to attack or otherwise inflict injury upon the objects of his uncontrolled or uncontrollable desires.

The second model broadens the category to include all mentally abnormal repeat offenders deemed dangerous.

An individual who, by the demonstration of persistent, aggravated antisocial or criminal behavior, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to society so as to require such confinement and treatment.

Most statutes require some degree of mental illness. The concept of sexual psychopath, however, is too vague for judicial or administrative use.

All sexual offenders are not sexually deviated, all sex deviations do not become sexual offenses, some non-sexual offenses are motivated by sexual conflict, there are non-sexual conflicts that stimulate sexual deviance or offense, there are a variety of psychiatric conditions which go into producing any one of the sex offenses.

There is a general paucity of treatment in programs for sexual offenders.

A recent study says the results from various states can be regarded at best as inconsistent, and at worst as warranting the conclusion that there has been no success at all in treating sex offenders.

Few American institutions for such offenders have good treatment programs. Most are primarily security conscious.

Vague definitions of sexual offenders and standards of improvement and the lack of procedural safeguards have caused major problems with special sex offender statutes.

The intent of such laws was to provide greater security for society than is achieved by civil commitment or the criminal process.

Misconceptions about sexual offenders:

1. there are large numbers of sex fiends;
2. sex offenders are usually recidivists;
3. sex offenders progress to more serious types of sex crimes;
4. it is possible to predict the danger of serious sex crimes being committed by sex deviates;
5. sex deviation is a clinical entity;
6. these individuals are over-sexed;
7. effective treatment methods exist;
8. sex laws in other states are controlling sex offenders;
9. civil rights are not involved in sexual psychopath laws;
10. sex problems can be solved by passing a law.

The traditional concept of sexual deviancy is undergoing revision, for example; contraception, abortion, adultry, fornication, homosexuality, bisexuality, masturbation.

Many medico-legal injunctions against certain behaviors among consenting adults have more of a politico-economic basis than an actual concern for an individual's health or morals.

The most frequent psychiatric conditions associated with sexual offenses are mental retardation, psychoses, psychoneurosis, alcoholism, and psychopathic behavior.

Conclusions: Legislation in other states has established categories of sexual offenders and provided special treatment programs for these offenders.

Although remarkable success is claimed by some of these programs, over-all independent evaluations do not support the effectiveness of either the legislation or the treatment programs.

In my opinion, creating a special category of sexual offenders or establishing special treatment programs for them is not advisable.

Recommendations (these are my personal opinions and not necessarily those of the Department of Human Resources):

----- allow any sexual behavior between consenting adults;

----- prohibit sexual acts between adults and children those involving coercion with threats of bodily harm or death;

----- improve quality of availability of pre-trial and pre-sentence mental health evaluations so that the criminal justice system will know when an offender has a mental disorder and what treatment/rehabilitation might be indicated and what the likely result of such treatment/rehabilitation might be;

----- increase availability of community mental health programs for mentally disordered persons with special emphasis on outreach from such programs to persons in need of treatment but who are reluctant or unable to participate in the treatment program;

----- improve capacity of probation to see that defendants placed on probation on condition that they get mental health treatment actually cooperate with the recommended treatment program;

----- upgrade level of service in mental health programs in both corrections and mental health - providing more comprehensive and individual care;

----- improve liaison and coordination between mental health and criminal justice system.

REFERENCES

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Legal Issues in Psychiatric Care. Tancredi, Lieb, and Slaby. Harper and Row, 1975.

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Psychiatry and Law. Ralph Slovenko. Little, Brown and Company, 1973.

Psychiatry and The Criminal. John Macdonald. Charles C. Thomas, 1969.

Mental Health and Law: A System in Transition. Alan Stone. National Institute of Mental Health Center for Studies of Crime and Delinquency, 1975.

APPENDIX E

"RAPE"

A RAPE OCCURS EVERY ELEVEN HOURS IN NORTH CAROLINA.

REPORTED RAPES HAVE INCREASED OVER 40% SINCE 1969.

NO COMPILED DATA IS AVAILABLE ON THE PROFILES OF RAPE VICTIMS OR THOSE CONVICTED OF RAPE.

Over 800 rapes were reported in North Carolina in 1973.

It is estimated that a rape occurs approximately every 11 hours (Figure 3-45).

FREQUENCY OF RAPE:

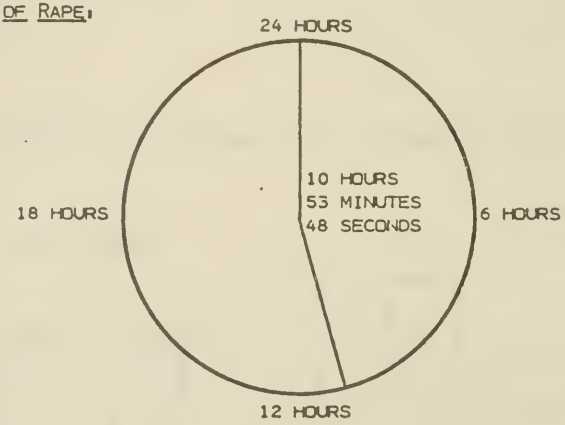


FIGURE 3-45

Of the rapes reported in 1973, about 65% were rapes by force: 35% were cases of attempted rape (Figure 3-46).

ALL REPORTED RAPES:

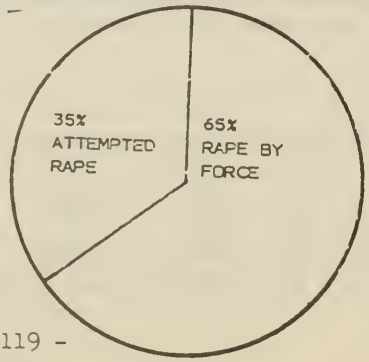


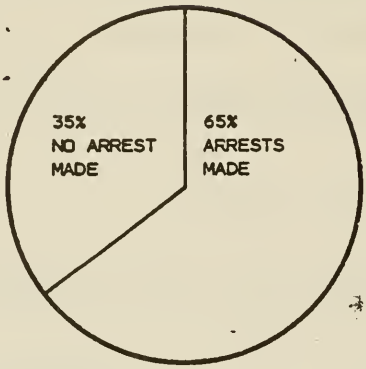
FIGURE 3-46

*Information source:
The Status of Women in North Carolina
(1st ed., 1974, pp. 101-107)
Presented to the 1975 N.C. General Assembly
by the
N.C. Commission on the Education
and Employment of Women

Of the rapes reported in 1973, arrests were made in 65% of the cases (Figure 3-47).

ARRESTS FOR RAPE:

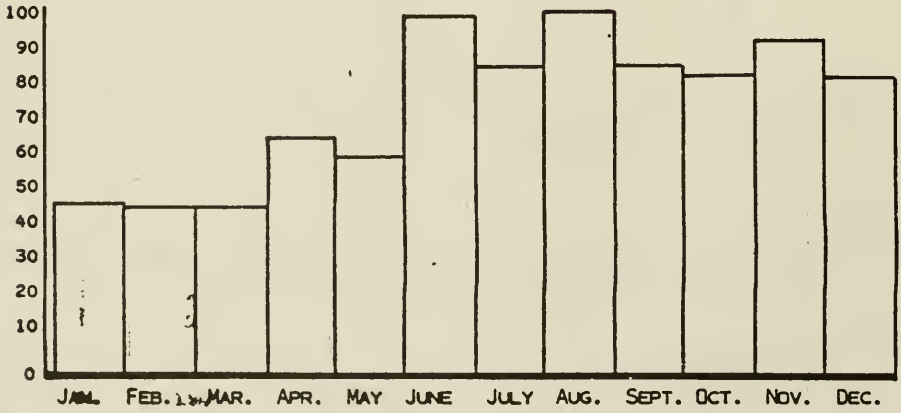
FIGURE 3-47



June and August had the greatest frequency of rape compared to other months in 1973 (Figure 3-48).

FREQUENCY OF RAPE, BY MONTH:

FIGURE 3-48



Rape in North Carolina increased 41% from 1969 to 1973 (Figure 3-49).

1969	1973	% Increase
602	847	41%

INCREASE IN RAPE:
(1969 TO 1973)

FIGURE 3-49

MAJOR CITIES	NUMBER OF RAPES IN 1969	NUMBER OF RAPES IN 1973	PERCENTAGE INCREASE
ASHEVILLE	9	22	144%
CHARLOTTE	81	136	68%
RALEIGH-DURHAM	54	95	76%
FAYETTEVILLE	29	94	224%
GREENSBORO-HIGH POINT	78	136	74%
WILMINGTON	13	32	146%

Conclusion

The number of reported rapes has increased significantly in the past five years.

Because of the sensitive nature of the crime, rape has become one of the most serious and controversial crimes that victimizes women. Although public awareness of the problem has increased, current remedies and sources of information are not satisfactory, particularly:

1. the lack of knowledge of the personal and social factors that relate to the occurrence of rape,

2. the painful publicity and legal process imposed on the victim during the subsequent investigation and

3. the appropriate punishment for the crime.

Because of the demanding publicity and legal process imposed on the rape victim, many sources suggest that the number of unreported rapes is very large, making the crime more widespread than statistics indicate.

Concerns and controversies will continue until a thorough, systematic statewide investigation of all aspects of rape is undertaken.

Unfortunately there have been only a few rape crisis centers established in our state. An urgent need exists for additional rape crisis centers, particularly in the urban areas. They will serve a vital function in the victim's rehabilitative process.

Recommendations

The Commission on the Education and Employment of Women recommends:

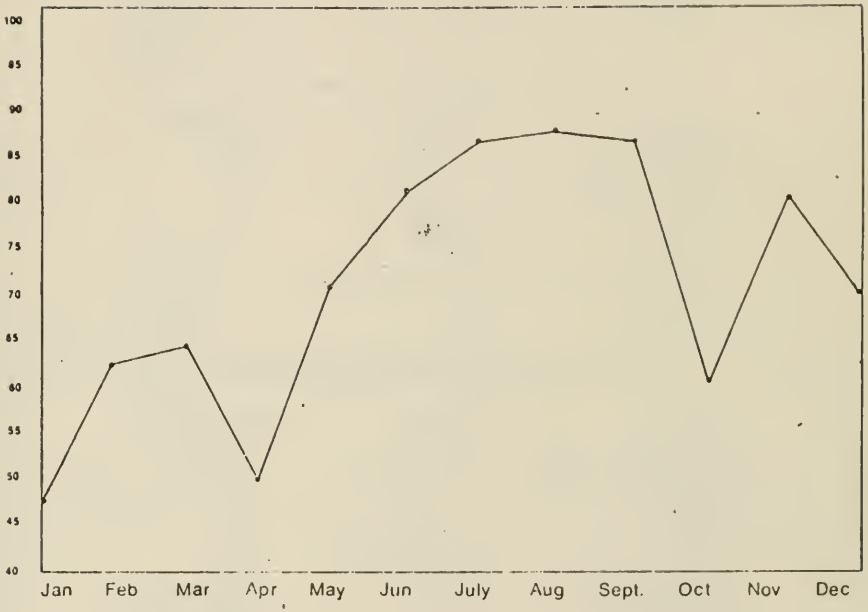
1. that a thorough, state-wide study of rape in North Carolina be undertaken; further that the legislature grant the Commission on Women additional funds to implement the study and

2. that additional rape crisis centers be established across the state through the County Councils on the Status of Women or through other sources at the local level.

Chart Sources

Figure 3-45	North Carolina, Department of Justice, Police Information Network, "Crime in North Carolina," 1973.
Figure 3-46	Ibid.
Figure 3-47	Ibid.
Figure 3-48	Ibid.
Figure 3-49	Federal Bureau of Investigation, "Crime in the United States," U.S. Government Printing Office, Washington, D.C., 1969, 1973.

FORCIBLE RAPE *



Forcible rape is defined as the carnal knowledge of a female through the use of force or the threat of force. Assaults to commit forcible rape are also included; however, statutory rape (without force) is not counted in this category.

In 1975, there were 852 offenses of rape reported in North Carolina. This figure reflects an increase of 10.2% from the reported 773 rapes of 1974.

The month to month variations of the occurrence of rape in 1975, show that the months of July, August and September have the greatest frequency of rape as compared to any other months of the year.

Of the total number of rapes reported in 1975, 57.51 percent were cleared by arrest or exceptional means.

* Excerpted from Crime In North Carolina: 1975 Uniform Crime Report, compiled by the Police Information Network (North Carolina Department of Justice).

FORCIBLE RAPE

Beginning in July 1975, the Police Information Network began collecting additional information on rape. During this six month period there were 317 actual rapes and 158 attempted rapes. Some preliminary statistics have been compiled on 289 of the 317 actual rapes in an attempt to provide more insight into the offense of rape.

DISTRIBUTION OF INTRA-INTERRACIAL RAPE

CATEGORY	NUMBER	% DISTRIBUTION
Intraracial Rapes	198	68.5
Interracial Rapes	83	28.7
Unknown or Mixed*	8	2.8
TOTAL	289	100.0

** Includes instances where there was more than one offender of different races*

RELATIONSHIP OF OFFENDER(S) TO VICTIM

CATEGORY	NUMBER	% DISTRIBUTION
Friend	28	9.7
Acquaintance (Casual)	22	7.6
Boyfriend	11	3.8
Neighbor	26	9.0
Friend of Family	5	1.7
Unknown	12	4.2
No relation	167	57.8
Father/Stepfather	7	2.4
Uncle	3	1.0
Brother	4	1.4
Cousin	3	1.0
Family not specified	1	.3
TOTAL	289	100.0

PLACE OF OCCURRENCE

CATEGORY	NUMBER	% DISTRIBUTION
Home of Victim	93	32.2
Home of Offender	14	4.8
Home of Friend	6	2.1
Home of Relative	4	1.4
Home, Not Specified	11	3.8
Car	49	17.0
Vacant or Parking Lot	40	13.8
Wooded Area, Field	39	13.4
School, Dormitory	2	.7
Other	25	8.6
Unknown	6	2.1
TOTAL	289	100.0

DAY OF WEEK

CATEGORY	NUMBER	% DISTRIBUTION
Sunday	41	14.2
Monday	33	11.4
Tuesday	44	15.2
Wednesday	35	12.1
Thursday	35	12.1
Friday	39	13.5
Saturday	58	20.0
Unknown	4	1.4
TOTAL	289	100.0

TIME OF DAY

TIME PERIOD	NUMBER	% DISTRIBUTION
12:01 - 2:00 A.M.	51	17.6
2:01 - 4:00 A.M.	38	13.1
4:01 - 6:00 A.M.	22	7.6
6:01 - 8:00 A.M.	14	4.8
8:01 - 10:00 A.M.	5	1.7
10:01 - 12:00 A.M.	9	3.1
12:01 - 2:00 P.M.	18	6.2
2:01 - 4:00 P.M.	10	3.5
4:01 - 6:00 P.M.	11	3.8
6:01 - 8:00 P.M.	22	7.6
8:01 - 10:00 P.M.	37	12.8
10:01 - 12:00 P.M.	45	15.6
Unknown	7	2.4
TOTAL	289	100.0

NUMBER OF OFFENDERS PER OFFENSE

NUMBER OF OFFENDERS	FREQUENCY	% DISTRIBUTION
One	221	76.5
Two	37	12.8
Three	17	5.9
Four	8	2.8
Five	5	1.7
Six	1	.3
TOTAL	289	100.0

TYPE OF WEAPON UTILIZED

WEAPON	NUMBER	% DISTRIBUTION
Pistol	27	9.3
Shotgun	2	.7
Firearm, not specified	15	5.2
Knife	44	15.2
Club	7	2.4
Other	12	4.1
Unknown	4	1.4
No Weapon	178	61.6
TOTAL	289	100.0

INJURIES

	NUMBER	% DISTRIBUTION
*Injured	100	34.6
No Injury	189	65.4

* *Of the 100 injured 39 required medical attention*

APPENDIX F

December 8, 1976

Members of the Commission to Study Sexual Assaults:

As members of the North Carolina Rape Crisis Association, we have followed your proceedings with great interest. You have been thorough in carrying out your study and open-minded enough to have your awareness and sensitivity increased by the various people who have testified at your sessions. Your attitude toward the problems of sexual assault, and toward the problems of the victim in particular, is heartening to those of us who have worked so hard to alleviate some of those problems. We can only hope that your sensitivity will be reflected in the General Assembly when your proposed bill comes before that body. If we can be of help to you in disseminating information about the bill, please feel free to call upon us.

The portion of House Bill 296 which particularly interests us at this point is the one which asks your study commission to "develop recommendations for implementation and funding for: 1) Such programs as it finds necessary to train criminal justice, emergency room, crisis intervention center and rape crisis center personnel in appropriate techniques in the investigation and counseling of the rape victim, and 2) programs for education of the public in rape prevention."

Rape Crisis Center volunteers have, through practical experience, gained some expertise in these areas. We have found appropriate people to train us in crisis intervention techniques, we have worked with legal and medical personnel who become involved in rape cases, and we have spent a great deal of time and energy in attempting to educate the public in rape prevention. Most of this work has been done with minimal funding, which is at times a serious hindrance. Rape Crisis Centers need money for publications, office/counseling facilities, and a paid staff member who can handle administrative details.

Statewide, there is a desperate need for coordination of efforts. The most trying problem experienced by the State Association is the fact that there is no volunteer who has either the time or the means to carry out the job of coordinating the efforts of the rape crisis centers geographically spread over the State. Some centers founder because there is no institution to which they can turn for advice on how to organize--which includes funding sources, training, and liaison with community resources. Therefore, we are convinced that there exists a need for a State Facilitator, whose duties we have outlined in the following pages.

Rape Crisis Centers perform a valuable service to the community. The effectiveness of this service could be increased with adequate

funding and recognition from the State of North Carolina.

We respectfully submit our suggestions as to how the State could make better use of volunteers who have already proved their willingness to work hard to combat the crime of sexual assault and its effects on thousands of citizens of North Carolina.

Problems of Rape Crisis Centers Which Indicate the Need for a State Facilitator

In our State Association meetings, we have discussed several problems which are common to our member Rape Crisis Centers and which we believe could be solved by the creation of a State Facilitator's Office to coordinate the efforts of centers and relay helpful information from one center to another.

Listed below are the basic problems which we feel require the services of a State Facilitator.

1. It is sometimes difficult and time-consuming for centers to find out about and contact public agencies with which they need to establish good working relations which would be mutually beneficial for both Center and agency. Several agency managers have asked for rape crisis center personnel to participate in in-service training to help their personnel become more sensitive to sexual assault victims, and thereby aid in their work.

2. A newly-forming center needs the expertise of people who are experienced in organizational matters such as training for counselors, where and how to get good materials for educating volunteers, and how to build a structure that will utilize the full capabilities of volunteers.

3. Some immediate funding is necessary for new centers, but it is difficult for an unproven group to acquire funds.

4. Even established centers sometimes encounter problems such as how to keep an adequate number of volunteers. Sometimes Centers can help each other with these problems, but geographic distribution makes organized communication difficult.

5. With the present interest in the problems of sexual assault, there is some duplication of efforts. State and federal agencies may be doing some good research and have other programs about which rape crisis centers simply don't hear. Some line of communication is necessary so that all interested agencies can work together to aid the victim and to educate the public.

6. Many centers are without members who have expertise in publicity. A package of information on how to reach all segments of the community would be of great benefit.

There is a need in this state for a full-time person who could gather and disseminate information among rape crisis centers and other service agencies. Dr. Elaine Hilberman of N. C. Memorial Hospital has proposed an office of State Coordinator to set up crisis intervention services in hospitals. We agree with her proposal and would like to see our State Facilitator working with this Coordinator.

The next section of this report is an example of a proposed Statute that would grant a State Facilitator position in the North Carolina State Government. It is designed in the format used in the N. C. General Statutes.

Outline of How the State Facilitator's Office Will Function

The State Facilitator's Office would function essentially as a problem-solving agency. The basic duties of this Office can be divided into four categories:

1. Research (needs of the sexual assault victim in terms of the services required)
2. Developing and implementing model programs
3. To have information available
4. Developing public education programs

To show how the State Facilitator, performing the duties and responsibilities set out in the Statute would help to alleviate the problems previously defined, we have elaborated on these four functions and listed some specific things the Office could do.

1. Researching Needs.
   a. Find out needs of the sexual assault victim in terms of the services she requires.
   b. Find out how these needs are now being met by existing agencies (both private and public).
   c. Find out how these needs could be better met.

2. Developing and implementing model programs.
   a. With information from all services concerned with the victim, the Office will develop effective programs and techniques for crisis intervention training.

b. Drawing on information from existing rape crisis centers and other state agencies and service agencies, such as the N. C. Justice Academy, the Office will set forth workable methods for establishing good community relations.

c. The office will provide the above information to developing rape crisis centers.

3. To have information available.

a. The State Facilitator's Office will be a clearing house for information on all aspects of sexual assault; i.e., legislative trends, studies on the subject and methods and services used by rape crisis centers.

b. The State Facilitator's office will be a communication link between N. C. centers and state agencies which concern themselves with problems of sexual assault.

c. The State Facilitator's office will publish a periodical for distribution to centers and the above agencies.

4. Developing public education program.

a. To contract with a private firm or a state agency such as the Agricultural Extension Service or the N. C. Public Education Network to develop a statewide public education program.

b. To help a citizens action group or some already existing rape crisis service to apply for a grant to develop and implement a statewide public education program.

SUPPLEMENTAL REPORT

FUNDING OF RAPE CRISIS CENTERS

There are five major rape crisis centers in North Carolina. By "major" we mean centers which have been operating for a substantial period of time solely as rape crisis centers. Other centers are now organizing and several centers operate as adjunctsof general crisis centers. Basically, centers maintain a crisis line (usually 24-hour) and attempt to educate the public about rape by speaking to groups and producing publications. Some of the better-established centers have task forces that reach into many community areas--such as counseling women prisoners, conducting in-service training with local law enforcement personnel, or helping other centers to get started.

There is very little uniformity to the operating procedures of the rape crisis centers beyond the two basic functions we have mentioned. We do not suggest that all centers should be run the same way, because local situations must, to some extent, color the character of any volunteer group. However, we have discovered problems that are common to most centers throughout the state, and we believe that state funding could relieve some of these problems and allow the centers to operate more efficiently. These problems are:

1) difficulty in obtaining funds for operating expenses--office supplies, physical facility, printing costs, emergency funds for victims, reimbursement for expenses incurred by volunteers, babysitting funds.

2) difficulty in becoming known in the community; usually because there is no money for publicity.

3) scarcity of volunteers for daytime hours since most volunteers have jobs which do not allow them freedom to do volunteer work during the day.

The need for funding in the first two areas requires no further explanation. The need for daytime volunteers could be largely filled by the funding of a paid full-time staff person who would be on duty during regular office hours. The necessity for such a person should be apparent in the list of duties we describe for her/him below:

1. Respond to crisis calls during the day when there is no volunteer on call.
2. Fill speaking engagements during the day when no volunteers are available.
3. Be the general spokesperson for the center; be able to either answer any questions from the public or refer questions to proper source.
4. Travel to conferences, both on sexual assault and counseling of victims and to relevant volunteer group workshops; conduct in-service training for center members to share this information.
5. Keep up day-to-day operation of the center (includes office work).

The qualifications for this position should be:

1. Experience with rape crisis centers
2. Office management experience
3. Training in crisis intervention techniques
4. Public speaking experience and ability

Rape Crisis Centers should be allowed to apply for State funding after having operated successfully for at least one year. A center would need to justify its request for funding by showing records of the number and types of calls received during its existence and by showing a record of its operating expenses and a projected budget for the coming year.

As the needs of communities vary, so do the needs and services of rape crisis centers; for that reason, there should be no attempt to set down rigid operational guidelines that centers must follow in order to receive funding. Funding should not be contingent on a center's urging people to report assaults to the police, since crisis intervention is a social service, not a law enforcement technique.

Rape crisis centers provide a valuable social service. Adequate funding would enable us to extend our services to more citizens of North Carolina.